

Exhibit I

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D. O'DONNELL
UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
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In Re:
Chapter 11
LEHMAN BROTHERS Case No. 08-13555(JMP)
HOLDINGS, INC., et al., (Jointly Administered)
Debtors.

-----X
VIDEOTAPED DEPOSITION OF DENNIS C. O'DONNELL
New York, New York
January 6, 2010

Reported by:
KATHY S. KLEPFER, RMR, RPR, CRR, CLR
JOB NO. 26649

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<p>1 D. O'DONNELL</p> <p>2 30(b)(6) subpoena recipient Milbank Tweed</p> <p>3 Hadley & McCloy and the witness, Dennis</p> <p>4 O'Donnell.</p> <p>5 MR. TECCE: James Tecce of Quinn</p> <p>6 Emanuel on behalf of the Official Committee</p> <p>7 of Unsecured Creditors.</p> <p>8 MR. MILLS: Carl Mills of Hughes,</p> <p>9 Hubbard & Reed on behalf of the trustee,</p> <p>10 James W. Giddens.</p> <p>11 MR. HINE: William Hine of Jones Day</p> <p>12 on behalf of Lehman Brothers Holdings, Inc.</p> <p>13 MS. BEVERLY: Constance Beverly from</p> <p>14 Milbank Tweed Hadley & McCloy on behalf of</p> <p>15 Milbank Tweed Hadley & McCloy.</p> <p>16 MS. NOCIOLO: Julie Niciolo from</p> <p>17 Boies, Schiller & Flexner on behalf of</p> <p>18 Barclays Capital.</p> <p>19 THE VIDEOGRAPHER: Will the court</p> <p>20 reporter please swear in the witness.</p> <p>21 * * *</p> <p>22 DENNIS C. O'DONNELL, called as a</p> <p>23 witness, having been duly sworn by a Notary</p> <p>24 Public, was examined and testified as</p> <p>25 follows:</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 D. O'DONNELL</p> <p>2 EXAMINATION BY</p> <p>3 MR. STERN:</p> <p>4 Q. Good morning, Mr. O'Donnell.</p> <p>5 A. Good morning.</p> <p>6 Q. We've marked as our first exhibit the</p> <p>7 deposition notice for today. We've marked it as</p> <p>8 Exhibit 498 and I have placed that in front of</p> <p>9 you.</p> <p>10 I have also placed in front of you for</p> <p>11 ease of reference a blank calendar for the month</p> <p>12 of September 2008 because we're going to be</p> <p>13 focusing largely on that period of time today.</p> <p>14 Did you have an opportunity to review</p> <p>15 the deposition notice that we've marked as</p> <p>16 Exhibit 498 before today?</p> <p>17 A. I am reviewing it as we speak, and the</p> <p>18 answer to your question is yes, I have reviewed</p> <p>19 this deposition notice prior to today.</p> <p>20 Q. What did you do to prepare for today's</p> <p>21 position to?</p> <p>22 A. That falls into a couple of</p> <p>23 categories. I have been involved in this matter</p> <p>24 for some time and was involved with the prior</p> <p>25 document subpoena so, in that context, did</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 D. O'DONNELL</p> <p>2 review documents that were ultimately produced</p> <p>3 prior to their production.</p> <p>4 Subsequent to receipt of the 30(b)(6)</p> <p>5 subpoena, I have reviewed additional documents,</p> <p>6 spoken with counsel, and spent time with counsel</p> <p>7 and others at Milbank reviewing the relevant</p> <p>8 facts.</p> <p>9 Q. Did you have an opportunity to speak</p> <p>10 with Mr. Despins?</p> <p>11 A. I have not.</p> <p>12 Q. Did you review any of Milbank's time</p> <p>13 entries from the September 2008 time period?</p> <p>14 A. At what point in time does your</p> <p>15 question --</p> <p>16 Q. In preparation for this deposition.</p> <p>17 A. Not in preparation for this</p> <p>18 deposition, no.</p> <p>19 Q. As you know, the deposition notice</p> <p>20 focuses largely on Milbank's knowledge and</p> <p>21 understanding of the sale transaction and</p> <p>22 elements of the sale transaction as of various</p> <p>23 points in time, and I'd like to start today with</p> <p>24 the point in time before the Sale Approval</p> <p>25 Hearing on September 19, 2008.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 D. O'DONNELL</p> <p>2 You recall attending the Sale Approval</p> <p>3 Hearing?</p> <p>4 A. Yes, I attended the sale hearing.</p> <p>5 Q. Who else from Milbank attended that</p> <p>6 hearing, if you recall?</p> <p>7 A. A number of Milbank partners and</p> <p>8 associates, including Luc Despins, Dennis Dunn,</p> <p>9 Paul Aronzon, Crayton Bell, myself and Evan</p> <p>10 Fleck.</p> <p>11 Q. I'd like to focus on the day of the</p> <p>12 Approval Hearing, start in the morning, and ask</p> <p>13 whether Milbank received any briefings</p> <p>14 concerning the status of the sale transaction on</p> <p>15 that day.</p> <p>16 A. Since the appointment of the</p> <p>17 commitment -- retention of Milbank by the</p> <p>18 Committee on Wednesday, the 17th, there were a</p> <p>19 number of discussions between or among Milbank</p> <p>20 and the Debtors' advisors. Whether any took --</p> <p>21 whether I can segregate the ones that took place</p> <p>22 on the morning of the 19th I cannot tell you</p> <p>23 definitively at this point.</p> <p>24 Q. Describe for me, if you would, the</p> <p>25 briefings or conversations that Milbank had</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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concerning the elements of the sale transaction in the period from Milbank's retention through to the beginning of the Sale Approval Hearing.

MR. COHEN: Does that relate to briefings by the Debtors?

MR. STERN: It would include briefings by the Debtors, that would be Lehman, Weil and Lazard, or if there were any conversations with Barclays or anybody acting on behalf of Barclays.

MR. COHEN: But not internal conferences.

THE WITNESS: Understood. There were two significant briefings that I recall. The first, there was a meeting for all Creditors or all interested parties at Lehman on the morning of the 18th where attorneys from Weil and advisors to the Debtors, including, I believe, people from Lazard and A&M answered questions for attorneys from Milbank and its -- and the Committee's advisors, Houlihan and FTI, as well as questions answered by a number of other interested third parties. That was

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the first such briefing.

After that meeting ended, there was a meeting at which only Milbank, Houlihan and FTI participated with, again, Weil, I believe people from A&M, and Lazard.

Q. Where did that second meeting take place?

A. At the offices of Weil Gotshal.

Q. Where did the first meeting take place?

A. At the offices of Weil Gotshal.

Q. Were those meetings both on September 18?

A. Yes, they were.

Q. Did Milbank receive any further briefings or receive any further information concerning the transaction before the sale hearing began on the afternoon of September 19?

A. To repeat my testimony from earlier, from -- from the moment of our retention through the hearing, there were ongoing discussions between Milbank attorneys and attorneys at Weil regarding elements of the transaction or ...

Q. As of the start of the Sale Approval

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Hearing, had Milbank been told that the transaction had changed in any way from the transaction that had originally been explained to Milbank?

A. The transaction from Milbank's perspective was a moving target through that period. There were changes that were publicly disclosed and were also disclosed to Milbank prior to the hearing, including those memorialized in the First Amendment to the APA.

Q. Before the hearing began, what did Milbank understand or what had Milbank been told concerning the Fed financing of Lehman Brothers, Inc. and Barclays' replacement of that financing?

A. Events during this period, between Wednesday and Friday, moved at a very rapid pace. Disclosures regarding the changes were made to Milbank and made to others, sometimes at the same time, sometimes simultaneously.

Whether Milbank was told anything specifically about that issue prior to the hearing I cannot tell you.

Q. You don't recall?

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A. I don't know whether -- is the question whether Milbank alone was told something or whether Milbank as part of a group of Creditors asking questions was told something?

Q. The question really is whether Milbank understood or knew a fact regardless of how it was learned.

A. And the fact that they learned is what again?

Q. Anything having to do with Barclays' replacement of the Fed Repurchase Agreement with LBI.

A. As I sit here, I don't know whether we learned about that prior to the hearing or during the hearing or during the period leading up to the hearing, bearing in mind that the hearing was scheduled to start at 4 P.M. and did not start until sometime later as events continued to unfold and additional changes were disclosed to Milbank and the Court.

Q. By the end of the Sale Approval Hearing, did Milbank have any understanding concerning Barclays' replacement of the Fed

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repo?

A. Milbank knew at that point what was disclosed to the Court by Weil during the hearing.

Q. Did Milbank have any additional information beyond that?

A. Again, there were ongoing discussions or efforts to have discussions between Milbank and Weil. There were people in court that day. There were people in the office that day seeking to communicate with Weil regarding the status of the transaction.

At what point in time we learned of the role -- of the changes with respect to the repo is not something I can pinpoint with accuracy.

Q. Okay. At some point before the end of the Sale Approval Hearing, did Milbank have an understanding concerning the amount of the repo loan that Barclays assumed?

A. Before the end of the hearing, we -- we understood what I believe it was Mr. Miller or Ms. Fife told the Court about the amount of that loan.

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Q. Aside from what Mr. Miller and Ms. Fife told the Court, did Milbank receive any information in separate off-the-record discussions?

A. To the best of my knowledge, no.

Q. By the end of the Sale Approval Hearing, what understanding or knowledge did Milbank have concerning the amount of securities transferred to Barclays in connection with replacing the Fed repo?

A. Again, I think our knowledge would have been limited to what was represented on the record at the hearing.

Q. Is it your testimony that Milbank was not told anything about that other than what was said on the record?

A. Yes.

Q. Now, during the course of the hearing, do you recall that there was a recess?

A. I recall that there were a number of recesses.

Q. Do you recall that there was a recess towards the beginning of the hearing at which lawyers from Weil explained changes in the

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transaction?

A. Yes, I recall that recess.

Q. What occurred during that recess?

MR. COHEN: Objection. Vague.

Q. You can answer.

MR. TECCE: For the record, I just wanted the record to be clear that we're joining in Mr. Cohen's objections, and without doing it every time that he does it, to avoid clarity on the record.

MR. STERN: Sure.

Q. Let me rephrase the question. What was Milbank told during that first recess?

MR. COHEN: Objection. Vague.

A. Milbank was told during that first recess what everyone else was told during that first recess. My recollection is that, again, it was Ms. Fife or Mr. Miller summarized for the parties-in-interest in the courtroom developments, ongoing developments, in the transaction, attempting to present a summary of where the deal stood at that moment in time.

Q. Do you recall whether Ms. Fife made the presentation or Mr. Miller made the

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presentation?

A. To the best of my recollection, it was Ms. Fife who made the presentation.

Q. During that recess period, did anybody else address developments in the transaction?

A. It was, to the best of my recollection, an interactive process. There were -- I believe Lazard may also have been in the courtroom. It may have been there addressing issues. And there were others from Weil on the corporate side who may have been assisting Ms. Fife in making the presentation.

Q. In talking about developments in the transaction, did anyone on behalf of Lehman discuss Barclays' replacement of the Fed repo?

A. I do not remember that being the focal point of any discussion during that recess.

Q. Is it possible that that issue was discussed?

MR. COHEN: Objection. Calls for speculation.

A. My recollection is that Mr. Miller had told the Court, had represented to the Court, and I'm not sure whether it was before or after

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that recess, that Barclays was -- had taken out the Fed or had replaced the Fed with respect to that repo, but I don't recall whether there were further statements made during that recess or questions asked during that recess on that point.

Q. So you don't recall?

A. I don't recall.

Q. And do you recall whether Mr. Miller or Ms. Fife or anybody from Lazard during that recess discussed the amount of collateral or securities Barclays was receiving in exchange for taking out the Fed's financing?

A. Again, in the context of that recess, I don't remember that being a specific issue of discussion or questioning.

Q. It may have been, but you just don't recall?

MR. COHEN: Objection. Calls for speculation.

A. I don't recall.

Q. Do you recall whether during that recess there was any discussion concerning whether Barclays would receive as a part of the

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transaction certain clearance box assets or unencumbered assets?

A. I also do not recall whether that issue was discussed during the recess.

Q. Do you recall during that recess any person from Lehman referring to a category of additional assets estimated by Lehman to be worth \$1.9 billion?

A. Again, no recollection of that that was discussed during that recess.

Q. Is that a category of assets or was the transfer of that category of assets something Milbank knew going into the Approval Hearing?

A. It was an evolving process. The Approval Hearing lasted eight hours. Whether -- I do not believe that Milbank knew about the clearance box securities during the hearing.

Q. When you say you don't believe, do you have a firm recollection that Milbank was not told about that category of assets, or is it that you don't recall?

A. I don't -- I believe that Milbank was not told about that category of assets prior to

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the hearing.

Q. Okay. Did Milbank learn about that category of assets during the hearing?

A. They -- I -- they did not, to the best of my knowledge, learn about that category of assets during the hearing.

Q. Did Milbank participate in any discussions either before the hearing or during the hearing concerning a category of assets described as being worth \$1.9 billion?

A. To the best of my recollection, no.

Q. Did anybody from Milbank take any notes of any of the discussions on September 19 with Weil, Lazard or others concerning the developments in the transaction?

A. If any -- I did not, and I'm not aware of anyone who did.

Q. Did you participate in any discussions with Weil concerning whether -- withdraw that.

When Milbank was at court on September 19 for the hearing, were there any discussions or meetings that Milbank participated in in which anyone complained to Weil or others about developments in the transaction?

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MR. COHEN: Is that anyone from Milbank or anyone?

Q. Anyone.

A. The courtroom was full. There were two overflow courtrooms. There were many Creditors and parties in interest there with views about the transaction and the current state of the transaction. Milbank I'm certain heard from some of those Creditors about their views.

Q. Do you recall anyone complaining about a transfer of assets estimated to be worth 1.9 billion?

A. No specific -- I have no specific recollection of anyone making that specific a complaint.

Q. Is it possible that somebody made that complaint?

MR. COHEN: Objection. Calls for speculation.

Q. And that you just don't recall?

MR. COHEN: Same objection.

A. I have no specific recollection of such complaint.

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Q. Do you recall that there -- do you have a firm recollection that there were never any such complaints?

A. I don't have a firm recollection to that effect either.

Q. Okay. So you don't have a firm recollection one way or the other?

A. Correct.

Q. Okay. What discussions, if any, did Milbank participate in relating to developments in the transaction -- withdrawn.

In the discussions leading up to and at the sale hearing concerning developments in the transaction, did Milbank learn anything concerning the treatment of 15c3 assets or regulatory capital in connection with the transaction?

A. To the best of my knowledge, no.

Q. Do you recall whether there were any discussions on that subject?

A. I have no recollection or no knowledge of any discussions on that topic prior to the conclusion of the sale hearing.

Q. When did Milbank first learn, to the

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best of your recollection, that 15c3 assets or regulatory capital were being considered as a part of the transaction?

A. To the best of my knowledge, over the course of the weekend that followed the sale hearing.

Q. Do you have a firm recollection that Milbank did not know that before the end of the sale hearing?

A. I have a firm recollection to that effect, yes.

Q. What is your best recollection concerning when Milbank first learned the terms of Barclays' replacement of the Fed financing?

MR. COHEN: Objection. Vague.

A. I'm not certain that we -- that Milbank ever learned definitively the terms of that transaction.

Q. At some point before the closing, Milbank understood that Barclays had replaced the Fed's financing, correct?

A. Correct.

Q. Okay. And when did Milbank first develop that understanding?

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A. Over the course of the weekend following the closing.

Q. Not before the end of the sale hearing?

A. Well, as I previously testified, I believe Mr. Miller did tell the Court that in fact Barclays had replaced the Fed financing, so we knew that it had happened.

If the question is did we know the terms of it, we began to understand the terms of it over the course of the weekend, but I never received answers to all of our questions about those terms.

Q. As of the Sale Approval Hearing, did Milbank know that Barclays had announced publicly that Barclays anticipated realizing a gain on the acquisition of \$2 billion after tax?

A. Timeframe again?

Q. As of the start of the sale hearing.

A. As of the start of the sale hearing, I do not believe that Milbank knew of that announcement.

Q. Milbank learned of that after the sale hearing?

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A. I believe Milbank learned of that over the course of the weekend.

Q. Going into the sale hearing, did Milbank know that certain bondholders believed that Barclays would receive a windfall discount on the transaction?

A. As I previously testified, there were many Creditors with many complaints about the transaction. As counsel to the Committee, we -- we heard from a number of those Creditors about their complaints.

Q. Did Milbank hear specifically from Dan Golden about his analysis of the transaction and the analysis of the transaction that Goldman Sachs had done on his behalf?

MR. COHEN: Objection. Foundation.

A. Milbank did receive from Mr. Golden an e-mail forwarding an e-mail from someone at Goldman Sachs raising issues of that description.

Q. And what do you recall those issues were?

A. I don't have a specific recollection of the precise terms of the issues raised, but I

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think they raised -- there were a number of issues raised. They were issues relating to precisely what Barclays was -- what assets Barclays was buying and what it was giving up to get them.

Q. Do you recall that Mr. Golden and Goldman Sachs had concluded that Barclays would receive a windfall discount of billions of dollars?

MR. COHEN: Objection. Foundation.

A. I don't have a specific recollection that that terminology specifically was used.

Q. Did Milbank do anything to assess the points that Mr. Golden was making?

A. Throughout this period Milbank was conducting diligence on an expedited timetable seeking to understand the transaction. The e-mail received from Mr. Golden was -- was part of that, that overall mix. It was taken into account and was part of the reason that we were seeking fuller answers about the terms of the transaction.

Q. You referred to two meetings at Weil on the 18th. Starting with the first meeting,

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can you tell me in general what Milbank learned at that meeting concerning the transaction?

A. The first meeting was a, a meeting generally open to all Creditors. Milbank did not take the lead with respect to asking questions or obtaining information at that meeting. To the best of my recollection, there was a -- there were a whole range of questions asked about many aspects of the transaction. Beyond that, I can't be more specific.

Q. And then you referred to a second meeting. What was discussed in that meeting?

A. The second meeting, which took place following the first meeting, was a -- was the first sit-down meeting between the Debtors and Milbank and the Committee's advisors, and it covered a range of topics, including the transaction. I can't, as I sit here, I can't tell you specifically what issues were raised or discussed that relate to the Barclays transaction, but I'm -- I can't tell you with any specificity what issues were discussed.

Q. I take it that, before the Sale Approval Hearing, Milbank had reviewed the

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original Asset Purchase Agreement?

A. It had.

Q. And Milbank had reviewed the First Amendment?

A. It had.

Q. In connection with the APA, did Milbank have an understanding going into the sale hearing concerning the total value of the purchased assets to be transferred under the original APA?

A. Milbank itself did not have a specific understanding or opinion with respect to the value issues here. Houlihan Lokey was the Committee's financial advisor and was charged with understanding and evaluating the value components of the transaction.

Q. Do you know whether Houlihan ever developed an understanding concerning the total value of the purchased assets under the APA?

MR. COHEN: Objection. Vague.

A. Houlihan focused on that issue and asked questions about that issue prior to and after the sale hearing.

Q. Did Houlihan ever provide Milbank with

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a figure representing the total value of all purchased assets being transferred to Barclays under the APA?

MR. TECCE: I'm going to object.

MR. COHEN: You can answer that yes or no. That goes into privilege and work product.

A. Yes.

Q. It's your testimony that Houlihan had a calculation representing the total value of all purchased assets in the aggregate; is that your testimony?

A. Let me clarify. All purchased assets, including all components of the "purchased asset" definition?

Q. Yes.

A. As I sit here I don't have a recollection that Houlihan ever provided a total number with respect to all purchased assets.

Q. Did Milbank understand that the consideration that Barclays would pay included the assumption of certain liabilities?

MR. COHEN: Objection. Vague. Under which document?

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Q. Under the APA.

MR. COHEN: The original?

A. The original?

Q. Yes.

A. Under the terms of the original APA, yes, we -- Milbank understood that part of the consideration would be the assumption of certain liabilities.

Q. Okay. And going into the sale hearing, did Milbank have a calculation for the total value of all assumed liabilities under the APA?

A. Going into the sale hearing, Milbank did not have a calculation provided by Houlihan of the total value of all assumed liabilities, no.

Q. Did it have a calculation of the total value of all assumed liabilities from any source?

A. Going into the sale hearing, Milbank had what the Debtors represented to the Court was the total value of the assumed liabilities.

Q. Is it your testimony that the Debtors made a representation to the Court concerning

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the total value of all assumed liabilities under the APA?

MR. COHEN: Objection. Vague.

We're talking about September 19 and the original APA?

MR. STERN: Yes.

A. To the best of my recollection, the Debtors made representations to the Court regarding the cure and compensation components of the assumed liabilities.

Q. You understand that under the APA there was a list of assumed liabilities, correct?

A. Correct.

Q. You understand that under the APA there were provisions relating to the assumption of cure payments by Barclays?

A. Correct.

Q. And you understand that under the APA there was a provision relating to compensation payments by Barclays?

A. Correct.

Q. My question is whether at any time Weil or Lehman made a representation to Milbank

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concerning the total value of all assumed liabilities under the APA, including the list of assumed liabilities listed in the APA and cure and compensation?

A. The timeframe is prior to the hearing?

Q. Prior to the hearing.

A. To the best of my knowledge, no.

Q. So, going into the hearing, Milbank did not have a total figure for all purchased assets and it did not have a total figure for the value of all assumed liabilities; is that correct?

A. Correct.

Q. Did Milbank at any time prior to the Sale Approval Hearing suggest to Weil Gotshal that the purchase agreement should include valuation conditions with respect to purchased assets and assumed liabilities?

MR. COHEN: Objection. Vague.

A. To the best of my knowledge, Milbank did not make any such suggestion prior to the hearing.

Q. Prior to the hearing did Milbank lawyers ever suggest to Weil Gotshal that the

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purchase agreement should include representations and warranties concerning the total value of purchased assets and the total value of assumed liabilities?

MR. COHEN: Objection. Vague.

A. In a limited context, in the timeframe in the context of the access we had at the time, no.

Q. So, prior to the hearing, Milbank never suggested to Weil that the purchase agreement should include representations and warranties concerning the total value of purchased assets and the total value of assumed liabilities; is that correct?

A. That's correct.

MR. COHEN: Objection. Vague.

By "purchase agreement," are you talking about the APA?

MR. STERN: Yes.

Q. Let me rephrase the question. So, prior to the hearing, Milbank never suggested to Weil that the APA should include representations and warranties concerning the total value of purchased assets and the total value of assumed

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liabilities; is that correct?

A. That is correct.

Q. Did Milbank ever suggest to Weil before the Sale Approval Hearing that the APA should include true-up provisions with respect to the value of purchased assets or assumed liabilities?

A. To the best of my knowledge, no.

Q. Did Milbank understand that the original APA included a purchase price adjustment provision?

A. Yes.

Q. Did Milbank understand as of the sale hearing that that provision had been deleted?

A. No.

Strike that. I --

Q. Let me rephrase the question. Did Milbank understand as of the Sale Approval Hearing that that purchase price adjustment provision -- withdrawn.

Did Milbank understand as of the Sale Approval Hearing that the parties had agreed that they would delete that purchase price agreement -- purchase price adjustment provision

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from the Final Agreement?

MR. COHEN: Objection. Vague.

A. Based on representations made during the hearing, Milbank did understand that the purchase price adjustment had been removed from the deal, yes.

Q. Did anyone from Houlihan at any time ever communicate with Milbank -- withdrawn.

When Milbank learned that Barclays had announced that it anticipated a \$2 billion after-tax gain on the transaction, what was Milbank's reaction?

MR. COHEN: I'm going to caution the witness to not discuss either client communications or internal communications.

A. Over the course of the weekend, Milbank did receive a copy of the announcement. It reviewed it and ultimately forwarded it to Houlihan to review as well.

Q. Was that announcement by Barclays at all inconsistent with Milbank's understanding of the transaction?

A. The announcement was made on September 17 and related to a version of the transaction

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that was not the version of the transaction approved by the Court or under discussion over the weekend, so we didn't -- Milbank did not attempt to draw any comparisons between what was discussed in that announcement and what was approved by the Court or was under discussion over the weekend.

Q. Did Milbank believe that the earlier transaction was irrelevant at the time of the Court's approval?

MR. COHEN: You can answer that yes or no, but don't get into the thought process or work product behind that.

A. No.

Q. Milbank understood that Barclays' announcement related to the transaction as it stood on September 17, correct?

A. Based on the date on the announcement, yes.

Q. Okay. Did Milbank believe the Barclays announcement remained relevant as of the time of the sale hearing?

A. Milbank --

MR. COHEN: You can answer that yes or

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no.

Q. Withdrawn. Did Milbank believe that Barclays' September 17 announcement remained relevant at any time prior to the closing?

MR. COHEN: Yes or no.

A. Yes.

Q. So the Barclays announcement was relevant?

A. Prior to closing, yes.

Q. Was that announcement of an anticipated gain considered by Milbank to be at all inconsistent with the terms of the transaction as Milbank understood the transaction prior to closing?

MR. COHEN: You can answer that yes or no.

A. Can you repeat the question?

Q. Sure. Was the announcement by Barclays of an anticipated acquisition gain inconsistent with Milbank's understanding of the transaction?

A. Yes.

Q. What did Milbank do to address that inconsistency?

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A. It forwarded the announcement to Houlihan, who was charged with evaluating the value components of the transaction.

Q. Did Milbank do anything other than that?

MR. COHEN: You can answer yes or no.

A. No.

Q. As to Barclays' announcement of an anticipated \$2 billion after-tax acquisition gain, did Milbank ever raise any concerns with Weil or Lazard or anyone from Lehman about that announcement?

A. Timeframe, please?

Q. At any time. At any time through September 22.

A. Through closing.

Over the course of the weekend, we were seeking answers to many questions about the transaction. I cannot tell you that -- that that announcement was not brought to Weil's attention.

Q. Do you have a recollection of Milbank discussing that announcement with Weil?

A. I don't have a specific recollection

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to that effect, no.

Q. Did Milbank make -- withdrawn. Prior to the closing, did Milbank have any communications with anybody from Barclays or representing Barclays?

A. Yes.

Q. Who?

A. One communication of which I am aware is one with Mark Shapiro of Barclays.

Q. This is prior to closing. Mark Shapiro was with Lehman.

A. All right.

Q. And my question goes to --

A. Yeah, you're correct.

Q. -- Barclays -- we'll come back to Mark Shapiro, but my question goes to Barclays executives or Barclays lawyers or financial advisors.

A. Over the course of the weekend, representatives of Barclays were at Weil, and Milbank did have some limited contact with Barclays representatives during that period.

Q. Did Milbank ever raise any concern with the Barclays people concerning Barclays'?

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announcement of an anticipated \$2 billion after-tax acquisition gain?

A. To the best of my knowledge, no.

Q. Why not?

A. As I've previously testified, we were looking at many issues, had many unanswered questions. That announcement was one element of the facts of which we were aware of that weekend that we had questions about, but we did not ask Barclays about it.

Q. Did Milbank not consider it significant enough to raise with Barclays?

MR. COHEN: Objection. Vague.

A. The, again, the announcement spoke of a \$2 billion gain of some sorts, but it was couched in accounting jargon that we at Milbank did not definitively have an understanding of. We forwarded it to Houlihan to investigate further and tell us what they thought the announcement meant.

Q. Did Milbank ever ask whether Barclays still anticipated an acquisition gain on the transaction in light of the further developments in the transaction leading up to closing?

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MR. COHEN: Did they ask Barclays that question?

MR. STERN: Anyone.

A. Timeframe again?

Q. Anytime leading up to closing.

A. And did we ask anyone?

Q. Yes.

A. I have no specific recollection that we asked anyone that question.

Q. Can you explain why Milbank would not have asked that question?

MR. COHEN: Objection. I will instruct the witness not to answer. That's work product.

Q. Now, you referred to a conversation with Mark Shapiro. What do you remember about that conversation?

A. My recollection relates to an e-mail from Mark Shapiro in which Mark Shapiro told Milbank and Houlihan and FTI who at Lehman they should speak to about various issues.

Q. Do you recall approximately when that e-mail was sent?

A. I believe that e-mail was sent on the

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18th of September.

Q. After the sale hearing and before the closing, what was Milbank's role in connection with the transaction?

MR. COHEN: Objection. Vague.

A. Milbank's role as counsel to the Committee was to seek to undertake the diligence with respect to the transaction that it had not been able to undertake prior to the sale hearing and desire to undertake, you know, complete before closing.

Q. Did Milbank understand that there was a provision of the Sale Order concerning Committee consent to possible changes in the purchase agreement?

MR. COHEN: You can answer yes or no.

A. Yes.

Q. Is that a provision that Milbank negotiated with Weil?

MR. COHEN: You can answer yes or no.

A. Yes.

Q. Tell me about Milbank's negotiations with Weil concerning that provision of the Sale Order.

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A. That provision of the Sale Order was one of several that were -- was discussed during the sale hearing and after the sale -- after the Court had actually approved the hearing -- approved the sale and prior to entry of the order. It was anticipated that changes might be made, the Debtors had represented that to the Court, and the Committee wanted to ensure that it had the ability to consent to any such changes.

Q. Who from Milbank negotiated that provision?

A. There were a number of Milbank partners in the courtroom that day and night. I can't tell you as I sit here who took responsibility for that specific provision, but it was one of several Milbank partners.

Q. Over the weekend leading to the closing, did Milbank have any discussions with Weil concerning whether the Committee's consent would be required?

A. Yes.

Q. What were those discussions?

A. The order stated that if there were

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material modifications made to the transaction, the -- both the consent of the Committee and approval of the Court would be required. As we evaluated the transaction over the weekend, the issue of whether any of the proposed changes were material was something that came up with Weil.

Q. And who discussed that?

A. To the best of my recollection, these discussions were between Luc Despains and Harvey Miller.

Q. And do you know what they discussed?

A. I don't believe the discussions were conclusive. It was -- the Committee was, as I previously testified, conducting diligence over the weekend, had questions that had not yet been answered, and the issue was whether if these questions could not be answered, whether any of the open issues were material enough to require Court approval.

Q. Aside from the discussion between Mr. Despains and Mr. Miller, were there any other discussions between Milbank and Weil concerning that issue?

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A. No.

Q. And how did you learn what Mr. Despains and Mr. Miller discussed?

A. Through discussions with others at Milbank.

Q. Who?

A. Crayton Bell.

Q. Anybody else?

A. No.

Q. What did Mr. Bell tell you?

A. Mr. Bell was present in the room when these discussions took place.

Q. And what did he tell you about the discussions?

A. That they were largely hypothetical; that the question came up in the context of, if these -- if the questions that remained unanswered yielded certain types of answers, would Court approval be required.

Q. Did Mr. Bell tell you what Mr. Despains said in that conversation?

A. Not verbatim, no.

Q. In general?

A. I've already testified as to my

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2 general understanding of what the discussion
3 entailed.

4 **Q. Did Mr. Despina or anybody from**
5 **Milbank ever tell Weil that Milbank believed**
6 **Committee consent would be required?**

7 A. If it was definitively established
8 that there were material changes to the
9 transaction, yes.

10 **Q. When did Milbank make that assertion**
11 **to Weil?**

12 A. I don't have a verbatim account of the
13 discussion, but the general thrust of the
14 discussion I just recounted covered that point
15 as well.

16 **Q. And any material changes would have to**
17 **be reflected in the final written agreement; is**
18 **that right?**

19 A. Correct.

20 **Q. Was Milbank ever provided the final**
21 **written agreements, the Final Purchase**
22 **Agreement?**

23 MR. COHEN: Objection. Vague.

24 A. Can you be more specific as to which
25 document you're talking about?

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2 **Q. After the closing, did Milbank ever**
3 **receive the Final Purchase Agreement?**

4 A. The purchase agreement --

5 **Q. Let me define the Final Purchase**
6 **Agreement.**

7 A. It would be helpful, yes.

8 **Q. Because it's defined in the Sale Order**
9 **and then it was defined again when Milbank filed**
10 **these papers.**

11 The final purchase --

12 MR. COHEN: Which papers?

13 MR. STERN: The Final Purchase
14 Agreement papers.

15 MR. COHEN: When Milbank filed the
16 final --

17 MR. STERN: Did I say Milbank?

18 MR. COHEN: Yes.

19 MR. STERN: I misspoke. I meant Weil.

20 **Q. When Weil filed the final agreements,**
21 **the Final Purchase Agreement was defined as,**
22 **number one, the original APA; number two, the**
23 **First Amendment to the APA; and, number three,**
24 **the Clarifying Letter?**

25 A. Okay.

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2 **Q. That's the Final Purchase Agreement.**
3 **So my question is, after the closing, did**
4 **Milbank receive a copy of the Final Purchase**
5 **Agreement?**

6 A. Yes.

7 **Q. Okay. Based on the review of that**
8 **Final Purchase Agreement, did Milbank have any**
9 **discussions with Weil concerning whether**
10 **Committee consent would be required?**

11 MR. COHEN: Object to the form.

12 A. Yes.

13 **Q. What were those discussions?**

14 A. Milbank had ongoing discussions with
15 Weil after the closing about questions it had
16 about the financial components of the
17 transaction.

18 **Q. Focusing on the Final Purchase**
19 **Agreement, including the final Clarification**
20 **Letter --**

21 MR. COHEN: And the schedules?

22 **Q. Focusing on the Final Purchase**
23 **Agreement, including the Clarification Letter,**
24 **the material that Milbank had as of September**
25 **22, did Milbank have discussions with Weil**

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2 **concerning whether, based on the material that**
3 **Milbank had on September 22, there would be a**
4 **need for Committee consent?**

5 A. As of September 22, Milbank did not
6 have the schedules, so the substance of the
7 discussions at that point were regarding
8 Milbank's need to see the final schedules.

9 **Q. Putting aside the schedules, based on**
10 **the terms that were in the agreements that**
11 **Milbank had, did Milbank ever express to Weil on**
12 **September 22 that Committee consent was**
13 **necessary?**

14 A. No, we had no reason to because at
15 that point in time we didn't have the
16 information necessary to reach a conclusion as
17 to whether Committee consent would be required.

18 **Q. In other words, based on the face of**
19 **the Clarification Letter, Milbank did not**
20 **identify any material changes requiring**
21 **Committee consent?**

22 MR. TECCE: Objection to the form of
23 the question to the extent it calls for work
24 product or privileged information.

25 A. Can you repeat the question?

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2 **Q. When Milbank received the final**
3 **Clarification Letter, did Milbank conclude based**
4 **on the face of the Clarification Letter alone**
5 **that there were material changes requiring**
6 **Committee consent?**

7 MR. COHEN: Objection.

8 MR. TECCE: Same objection.

9 MR. COHEN: Calls for privilege and
10 work product. Instruct the witness not to
11 answer.

12 **Q. After Milbank received the final**
13 **Clarification Letter, did Milbank communicate**
14 **with Weil that Committee consent would be**
15 **required based on the terms of the Final**
16 **Clarification Letter?**

17 A. No.

18 MR. COHEN: Objection. Vague.
19 Are you using Final Clarification
20 Letter and the September 22 documents that
21 were provided without the schedules
22 interchangeably?

23 The Clarification Letter has
24 schedules. The witness has testified that
25 on September 22, we didn't get schedules. I

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1 D. O'DONNELL
2 have no idea what you mean by final
3 Clarification Letter.

4 **Q. On September 22, Milbank received the**
5 **text of the Clarification Letter, correct?**

6 A. Correct.

7 **Q. Based on the text of the Clarification**
8 **Letter, did Milbank ever tell Weil that there**
9 **were material changes requiring Committee**
10 **consent?**

11 A. No.

12 **Q. Over the weekend before the closing,**
13 **was Milbank provided information relating to**
14 **what would become Schedule A of the**
15 **Clarification Letter?**

16 A. Yes.

17 **Q. What information was Milbank given?**

18 A. Milbank was provided with drafts of
19 Schedule A.

20 MR. COHEN: Jack, is this a good time
21 for a break? I'm having a technical
22 difficulty here.

23 MR. STERN: Sure. Sure. Let's take a
24 break.

25 THE VIDEOGRAPHER: That is the end of
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2 tape number 1. The time is 10:42 A.M.
3 We're now off the record.
4 (Recess.)

5 THE VIDEOGRAPHER: This is the start
6 of tape number 2. The time is now 10:55
7 A.M. We are now back on the record.

8 BY MR. STERN:

9 **Q. Mr. O'Donnell, I have placed in front**
10 **of you a thick document that we previously**
11 **marked as Exhibit 461B. I'll ask you to review**
12 **that and then, if you can, tell me what you**
13 **understand that to be.**

14 A. Based on my review of the document, it
15 appears to be the copy of Schedule A that was
16 provided to Milbank on September 21, 2008.

17 **Q. That's over the weekend before the**
18 **closing?**

19 A. Correct.

20 **Q. Were there other schedules made**
21 **available to Milbank and Houlihan over that**
22 **weekend?**

23 MR. COHEN: Objection. Vague.

24 A. Other copies of Schedule A?

25 **Q. Or any schedules of purchased assets.**

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2 A. No.

3 **Q. 461B -- your testimony is that 461B is**
4 **the only spreadsheet or schedule that was made**
5 **available to Milbank and Houlihan over the**
6 **weekend?**

7 A. Yes.

8 **Q. And when Milbank received this, did**
9 **Milbank have any questions concerning the**
10 **information here?**

11 MR. COHEN: You can answer yes or no.

12 A. Yes.

13 **Q. And what questions did Milbank have?**

14 MR. COHEN: Objection. Calls for work
15 product. If you're asking for questions
16 that it had to people, not in a privileged
17 environment, like the Debtors or Barclays,
18 you can answer that, but internal
19 conversations or conversations with the
20 Committee's financial advisors I'll instruct
21 you not to answer.

22 **Q. What questions did Milbank have of**
23 **either Lehman or Barclays' representatives**
24 **concerning the information contained in Exhibit**
25 **461B?**

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A. Milbank did not raise any questions with any of the debtor representatives concerning Exhibit 461B.

Q. Is that because that was Houlihan's responsibility?

A. Correct.

Q. Over the weekend before the closing, did Milbank have an understanding concerning the amount of financing that Barclays had assumed in stepping into the Fed's shoes?

A. As I previously testified, only to the extent that that information was provided at the hearing on the 19th.

Q. Milbank had no further discussion concerning that issue over the weekend?

A. Correct.

MR. COHEN: Again, only to the extent that it was with people outside of the privilege.

A. Over the course of the weekend, Milbank was seeking information about a variety of topics and had directed Houlihan to do the same. So questions were being raised about issues that included the amount of the Barclays

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repo.

Q. Okay. What information did Milbank receive from Lehman or Barclays' representatives concerning the terms of the Barclays repo?

A. Timeframe?

Q. Over the weekend before the closing.

A. At some point on Sunday, I believe, late on Sunday, Milbank was provided with an explanation, or proffered explanation, of the relevant numbers.

Q. Who provided that explanation?

A. I believe it was provided by Michael Klein.

Q. And when Mr. Klein provided that explanation, who else was present?

A. Representatives of Houlihan and Milbank.

Q. Do you recall approximately what time of day that took place?

A. I believe it was very late in the evening of Sunday, the 21st, and potentially early in the morning of Monday, the 22nd.

Q. And what did Milbank learn through that explanation?

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A. That it had further questions to ask and directed Houlihan to continue to investigate the issues.

Q. Did Milbank tell Mr. Klein that Milbank had further questions?

A. To the best of my recollection, the conversation was one in which the explanation was -- the explanation was proffered and questions were asked until he left the room.

Q. What questions were asked?

A. Questions relating to the specific numbers that were disclosed to Milbank and Houlihan in this context.

Q. What were those numbers?

A. I don't have a specific recollection of the numbers, and it was Houlihan that was charged with evaluating and understanding those numbers.

Q. In that discussion with Mr. Klein, did anyone other than Mr. Klein provide any explanation?

MR. COHEN: Objection. Vague.

A. Anyone?

Q. For example, did Mr. Miller or anybody

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from Weil or Lazard participate in providing an explanation?

A. To the best of my recollection, no.

Q. Over that weekend between the end of the Sale Approval Hearing and the closing, were Milbank lawyers present at Weil Gotshal?

A. Yes.

Q. Which Milbank lawyers?

A. Crayton Bell, Luc Despins, David Eastlake.

Q. Anybody else? Yourself?

A. I was not present, no.

Q. Were you present at any time over that weekend?

A. I was not, no.

Q. What was -- what was Mr. Bell's role over that weekend?

A. Mr. Bell is a corporate partner at Milbank who was there with a hope of reviewing the documents as they were revised.

Q. And do you know whether he was provided drafts of the documents?

A. He spent a lot of time sitting and waiting, but was ultimately provided with a

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2 draft of the Clarification Letter, yes.

3 **Q. Do you know whether he was provided**
4 **more than one draft of the Clarification Letter?**

5 A. Timeframe?

6 **Q. Over the weekend between the Sale**
7 **Approval Hearing and the closing.**

8 A. He was provided with a draft of the
9 clarification sometime on the afternoon of
10 Saturday, the 20th, and may have seen other
11 drafts towards the end of the process on Sunday
12 night, Monday morning, but primarily he had
13 access to only the draft provided on Saturday.

14 **Q. You say he may have been provided**
15 **drafts on Sunday. Do you know whether he was?**

16 A. I don't know definitively that he was
17 provided with a draft subsequent to the one that
18 he saw on Saturday.

19 **Q. You don't know one way or the other?**

20 A. I don't know one way or the other.

21 **Q. Do you know whether over that weekend**
22 **on Saturday and Sunday certain drafts of the**
23 **agreements were distributed in hard copy at**
24 **Weil?**

25 A. There were many people meeting at Weil

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2 a long time waiting and not receiving what he
3 needed to receive to do what he wanted to do
4 there.

5 **Q. I understand your testimony about**
6 **waiting, but my question is whether you know one**
7 **way or the other if Mr. Bell, while at Weil on**
8 **Sunday going into the closing, received in hard**
9 **copy subsequent drafts of the Clarification**
10 **Letter?**

11 MR. COHEN: Objection. Asked and
12 answered.

13 **Q. Do you know that one way or the other?**

14 MR. COHEN: Same objection.

15 A. I have no specific knowledge of that.

16 **Q. So it's possible that he did?**

17 MR. COHEN: Objection. Calls for
18 speculation.

19 **Q. Correct?**

20 MR. COHEN: Asked and answered.

21 **Q. So it's possible that he did, correct?**

22 MR. COHEN: Same objections.

23 A. Yes.

24 **Q. Do you know how much time Mr. Bell**
25 **spent at Weil over that weekend leading to the**

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2 over that weekend. It's possible that there
3 were hard copy drafts distributed to others.
4 The only draft that we received was the one
5 referenced on Saturday.

6 **Q. You don't know, however, whether Mr.**
7 **Bell received hard copy subsequent drafts?**

8 A. Correct.

9 **Q. So it's possible that Mr. Bell**
10 **received in hard copy subsequent interim drafts**
11 **of the Clarification Letter between Saturday and**
12 **the closing?**

13 A. It is --

14 MR. COHEN: Objection. Calls for
15 speculation.

16 You can answer.

17 A. I don't have any specific knowledge
18 whether he did or not.

19 **Q. You can't exclude the possibility,**
20 **however, that Mr. Bell, while at Weil, while**
21 **physically present at Weil, received hard copy**
22 **interim drafts of the Clarification Letter,**
23 **correct?**

24 A. My general understanding of the course
25 of dealing that weekend was that Mr. Bell spent

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2 **closing?**

3 A. He was there most of Saturday and most
4 of Sunday into Monday morning.

5 **Q. And the closing was Monday morning?**

6 A. Correct.

7 **Q. Do you know how much time Mr. Despina**
8 **spent at Weil over that weekend leading to the**
9 **closing?**

10 A. He was also there most of Saturday and
11 most of Sunday into Monday morning.

12 **Q. And Mr. Eastlake?**

13 A. He was there for a period of time on
14 Sunday afternoon into -- into Monday morning.

15 **Q. Did anybody from Milbank attend the**
16 **closing?**

17 A. No.

18 **Q. Why not?**

19 A. The closing was electronic. It took
20 place on the morning of the 22nd. There was no
21 need for us to be there.

22 **Q. Was Milbank invited to attend the**
23 **closing?**

24 A. Yes.

25 **Q. Do you know whether certain schedules**

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or draft schedules were reviewed at the closing?

A. No.

Q. You don't know?

A. Correct.

Q. While Mr. Bell, Mr. Despins and Mr. Eastlake were at Weil over the weekend before the closing, what meetings did they participate in, putting aside meetings with the Committee or Houlihan?

A. To reiterate my testimony, they spent a lot of time waiting around, but I believe on Saturday they participated in a meeting that included a number of the key parties, including Weil and representatives of Barclays, and participated in a similar meeting late in the day on Sunday.

Q. Did they participate in any meetings in which representatives of JPMorgan Chase were present?

A. I believe representatives of JPMorgan Chase were present at at least one of those meetings.

Q. Did they participate in any meetings at which representatives of the DTCC were

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present?

A. I don't have specific recollection of all of the parties in these meetings, but they have been described as meetings including all the key parties, so I'm assuming -- I won't assume. I don't know.

Q. Describe for me, if you would, the Saturday meeting.

A. Our role was peripheral. It occurred I believe shortly after us being provided with the draft of the Clarification Letter. We had many questions about the Clarification Letter and were not in a position to participate productively in the meeting.

Q. Did the Milbank lawyers observe the meeting?

A. Yes.

Q. Do you know how long it lasted?

A. Not precisely, no.

Q. Roughly?

A. An hour or so.

Q. And what were the topics discussed in that Saturday meeting?

A. The ongoing negotiations over the open

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issues relating to the transaction.

Q. Do you know whether there were any discussions in that meeting concerning the treatment of the Barclays repo?

A. To the extent that that is an issue reflected in the Clarification Letter, yes.

Q. Do you know whether there were any discussions in that meeting concerning the treatment of the clearance box assets?

A. Same answer.

Q. Do you know whether there were any discussions in that meeting concerning the treatment of the 15c3 assets?

A. Same answer.

Q. Do you know whether there were any discussions in that meeting concerning the treatment of exchange-traded derivatives?

A. The same answer, with the qualification that my level of familiarity with the meeting is not a verbatim account, but my general understanding is that it related to the open issues, including the Clarification Letter.

Q. Turning to the late Sunday meeting, can you tell me what the topics of that meeting

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were?

A. A continuation of the Saturday meeting.

Q. Do you know what, if any, discussions took place at the late Sunday meeting concerning the treatment of the Barclays repo?

A. Not specifically, no.

Q. Do you know whether there were any discussions at the late Sunday meeting concerning how LBI and JPMorgan would handle a shortfall in delivery of securities under the Barclays repo?

A. Again, that was one of the issues under discussion over the weekend. Whether it was specifically discussed in the Sunday or Saturday meeting I cannot tell you.

Q. It may have been, in other words?

A. Your guess is --

MR. COHEN: Objection. Calls for speculation.

Q. Let me just -- is it your testimony that that subject would have been discussed over the weekend?

A. It was -- it should have been

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A. Are you referring to the meeting with Mr. Klein?

Q. No, I'm referring to the meeting with a number of parties, including JPMorgan.

A. I believe that meeting took place shortly before the meeting with Mr. Klein.

Q. So late in the evening or early morning?

A. Correct.

Q. And do you know who attended that meeting?

A. Again, it's been described to me as a meeting with all the key parties. I can't tell you with specificity who was there.

Q. And what discussion was there at that meeting concerning the treatment of clearance box assets?

A. The meeting was a continuation of the ongoing discussions, and based on my understanding of what transpired there, that issue may have been discussed, but I don't have a specific recollection that it was.

Q. Was the value of the clearance box assets described to Milbank at any time over

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that weekend?

A. No.

Q. Milbank was never given an estimate by Lehman of the value of those assets?

A. It was Houlihan who was asking those questions, so if anyone received that information, it was Houlihan.

Q. And at the Sunday, this Sunday meeting with all the key parties, was there any discussion concerning the value of the securities Barclays was receiving under the Barclays Repurchase Agreement?

A. I don't have any specific knowledge that that issue was discussed specifically at that meeting.

Q. Was there any discussion concerning how those securities would be treated under the Clarification Letter?

MR. COHEN: Objection. Vague.

A. No specific knowledge as to whether that issue was discussed at that meeting.

Q. Was there any discussion at that meeting concerning the treatment of exchange-traded derivatives?

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A. Same answer.

Q. You don't know one way or the other?

A. I have -- I don't have specific knowledge that that issue was discussed at that meeting.

Q. It may have been, but you just don't know, is that correct?

A. Correct.

Q. And was there any discussion at that Sunday meeting concerning the treatment of the 15c3 assets?

A. Same answer.

Q. There may have been, but you don't know?

A. Correct.

Q. When Mr. Bell reviewed whatever drafts of the Clarification Letter he received, did he ever communicate any comments to Lehman or Barclays lawyers?

A. He posed questions to Lehman and Barclays lawyers.

Q. Did he ever make any comments or suggestions on the drafts?

A. No.

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Q. What questions did he pose?

A. A variety of questions about the evolving draft.

Q. Can you be more specific?

A. Questions relating to the key issues that had changed since the execution of the original APA.

Q. And what were those?

A. The primary issue related to the change, the changes in the definition of "purchased assets."

Q. Specifically, what were those changes that he raised questions about?

A. Without the document in front of me, it's hard to be specific about precisely the questions, what questions were asked.

Q. Okay. Let's turn, then, to Exhibit 26. We can put 461 to the side, just to get it out of your way.

MR. COHEN: Are we done with it?

MR. STERN: I think so.

Q. Exhibit 26 is a document that was marked in a previous deposition. It is a Notice of Filing of Purchase Agreement, et cetera, and

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it includes at Exhibit A, Asset Purchase Agreement, dated September 16, 2008; Exhibit B, First Amendment to the Asset Purchase Agreement dated September 19, 2008; and Exhibit C, Executed Clarification Letter Agreement, dated September 20, 2008.

Let's turn to Exhibit C.

MR. COHEN: I think the record misstated Exhibit A. It's dated September 16, 2008.

MR. STERN: I meant to say September 16.

Q. Let's turn to Exhibit C. Do you recognize this document?

A. Yes.

Q. Is this -- is this a document that Milbank received on September 22, 2008?

A. Yes.

Q. When Milbank received this document, did Milbank identify anything in the document that was inconsistent with what the Court had been told at the Approval Hearing on September 19 and did Milbank communicate that to Weil Gotshal?

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MR. COHEN: I would object to the extent the question calls for anything other than a communication to Weil Gotshal. And it's compound.

Q. Let me ask it this way, because you're right, it is compound.

After Milbank received the Clarification Letter on September 22, did Milbank communicate to Weil Gotshal anything that Milbank had identified as being inconsistent with what the Court had been told at the Sale Approval Hearing?

A. No.

Q. After Milbank received the Clarification Letter on September 22, did Milbank communicate to Weil that Milbank believed that Committee consent would be required?

A. No.

Q. Now, looking at the first page of the Clarification Letter under the heading Purchased Assets; Excluded Assets, I'm going to turn to Section 1(a)(ii), and it reads: "with respect to clauses (a), (d) and (e) of the definition of

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'Purchased Assets' in the Original Agreement, instead of the items referred to in such clauses, (A) the securities owned by LBI and transferred to Purchaser or its Affiliates under the Barclays Repurchase Agreement (as defined below) as specified on Schedule A previously delivered by Seller and accepted by Purchaser; (B) such securities and other assets held in LBI's 'clearance boxes' as of the time of the Closing, which at the close of business on September 21, 2008 were as specified on Schedule B previously delivered by Seller and accepted by Purchaser (provided, however, that Purchaser in its discretion may elect within 60 days after the Closing to return any such securities to LBI); provided, that no securities owned by LBHI or any Subsidiary of LBHI (other than LBI and other than as specified in the Agreement or clause (iii) below) are Purchased Assets," capital P, capital A, "and (C) exchange-traded derivatives (and any property that may be held to secure obligations under such derivatives) and collateralized short-term agreements."

With that section that I just read in

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mind, can you tell me whether any of the issues reflected here were discussed at the late Sunday meeting among the key parties at Weil Gotshal?

MR. COHEN: Objection. Vague.

A. No, I cannot tell you specifically that this specific paragraph of the Clarification Letter was discussed at that meeting.

Q. You don't know one way or the other?

A. Correct.

Q. Okay. It may have been, but you simply don't know, correct?

A. Correct.

Q. The paragraph I read has three subsections, A, B and C, describing different categories of assets. With respect to the first category, Category A, the securities transferred under the Barclays repo, did Milbank have as of September 22 an estimate of the value of those securities?

MR. COHEN: You can answer that yes or no.

A. Yes.

Q. And what was the -- what was that

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estimate?

MR. COHEN: To the extent that that estimate came from the Committee's financial advisors, do not disclose that. If the estimate came from the Debtors or Barclays or some public source, you can disclose it.

A. As of September 22, Milbank had the draft Schedule A that had been provided over the weekend, and Houlihan had been diligencing that schedule but had not reached conclusions as to the validity of the numbers in that schedule.

Q. That's Schedule 461?

A. Correct.

Q. That's Exhibit 461B?

A. Correct.

Q. With respect to Category B, the clearance box assets, did Milbank as of September 22 have an estimate of the value of those assets?

MR. COHEN: You can answer that yes or no.

A. Yes.

Q. What was that estimate?

MR. COHEN: Same caveat. To the
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extent it came from the Debtors, Barclays or some non-privileged source, you can disclose it. To the extent it came from Houlihan or one of the Committee's financial advisors, I'll instruct you not to answer.

A. It was \$1.9 billion.

Q. And with respect to Category C, exchange-traded derivatives and any property that may be held to secure obligations under such derivatives, as of September 22, did Milbank have an estimate of the value of those assets?

MR. COHEN: You can answer that yes or no.

A. Yes.

Q. And what was that estimate?

MR. COHEN: To the extent that it came from a privileged source, I'll instruct you not to answer. If it came from a non-privileged source, you can answer.

A. I don't have a specific recollection of what that number was.

Q. Do you know whether either Barclays or Lehman did provide an estimate concerning the

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value of exchange-traded derivatives and any property held to secure those derivatives as of September 22?

A. Yes, I believe they did.

Q. Do you have any recollection of the rough order of magnitude that you were given?

A. I don't have a specific recollection at this point.

Q. Do you have a -- do you have a recollection of whether it was in excess of \$1 billion?

A. My vague recollection is that it was less than that.

Q. Do you remember whether it was less than a billion, or are you not sure?

A. I'm not sure.

Q. And do you know who gave you that estimate? Withdrawn.

Do you know who gave Milbank that estimate?

A. Lehman.

Q. Lehman. Do you know who from Lehman?

A. No.

Q. Do you know whether that estimate was

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given to Barclays?

A. I don't know.

Q. Looking at page 4 under paragraph 8.

MR. COHEN: This is Tab C to Exhibit 26?

MR. STERN: Correct.

Q. On page 4, paragraph 8 is labeled Transfer of Customer Accounts. Do you see that?

A. Yes, I do.

Q. Okay. And I'll read it into the record: "All customer accounts of LBI other than customers who are affiliates of LBI shall be transferred to purchaser. In connection therewith, purchaser shall receive (1) for the account of the customer any and all property of any customer, including any held by or on behalf of LBI, to secure the obligations of any customer whose accounts are being transferred to purchaser as part of the business and (2) to the extent permitted by applicable law, and as soon as practicable after the closing, \$769 million of securities as held by or on behalf of LBI on the date hereof pursuant to Rule 15c3-3 of the Securities Exchange Act of 1934, as amended, or

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securities of substantially the same nature and value. Liabilities arising under seller's arrangements with DTC and its affiliated clearing organizations shall be excluded liabilities."

Now, with respect to the \$769 million figure in that paragraph, were there any discussions concerning that amount --

MR. STERN: Let's go off the record for a second.

(Discussion off the record.)

Q. With respect to the \$769 million figure in that paragraph, were there any discussions concerning that amount over the weekend prior to the closing?

MR. COHEN: You can answer that yes or no.

A. Yes.

Q. And what were those discussions?

MR. COHEN: You can answer that to the extent that there were discussions with people outside the privilege, meaning the Committee, its professionals and advisors, but to the extent that there were

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discussions among that group, I'll instruct you not to answer.

A. Yes, there were discussions with the Debtors concerning that issue over the weekend.

Q. Okay. And what were those discussions?

A. To the best of my recollection, they related to what portion of that \$769 million would go to Barclays and what portion would stay with LBI.

Q. Who participated in those discussions?

A. I'm aware of discussions on that topic between Luc Despins and Harvey Miller.

Q. And in those discussions was there any reference to the total amount of 15c3 assets available for transfer?

A. I don't have any specific recollection as to that issue.

Q. Do you know whether the amount of 15c3 assets believed at the time to be available for transfer was greater than \$769 million?

MR. COHEN: You can answer that yes or no.

A. I think I should qualify my last

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answer and this answer by saying that I know the issue of the amount of the 15c3 deposits and how they would be divvied up was discussed. I'm not sure of the precise numbers at issue. I don't know whether the 769 is the total number or the number that was allocated to Barclays.

Q. Okay. But there were discussions between Mr. Despins and Mr. Miller concerning that issue?

A. Correct.

Q. And do you know what was discussed in -- between Mr. Despins and Mr. Miller on that subject?

A. That it was an open issue, subject to ongoing negotiation, and Mr. Despins asked Mr. Miller for a report as to the outcome of those negotiations.

Q. Going back to page 2 at the top, we referred to that Category C, exchange-traded derivatives and any property that may be held to secure obligations under such derivatives, is it -- is it your recollection that, separate and apart from the 15c3 assets, you had an estimate -- Milbank received an estimate from

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Lehman of the value of the exchange-traded derivatives and any property that may be held to secure those derivatives?

MR. COHEN: Objection. Vague.

A. An estimate from whom?

Q. From Lehman.

A. I don't have a clear recollection one way or the other. The numbers in this paragraph overlap in my recollection, so I can't definitively tell you that we did receive an estimate as to Category C prior to the closing.

Q. So the value of Category C may have been, may have been uncertain as of that time?

A. Much --

MR. COHEN: Objection. Calls for speculation.

A. Much was uncertain as of this time from our perspective and from Houlihan's perspective.

Q. And do you know whether much was uncertain from Barclays' perspective?

MR. COHEN: Objection. Calls for speculation.

A. I have no idea what was in Barclays'

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2 mind.
3 **Q. Did Barclays ever express to you that**
4 **much was uncertain to Barclays?**
5 A. Our dealings with Barclays that
6 weekend were very limited, and in that context,
7 no.
8 **Q. So staying with this paragraph that**
9 **runs from page 1 to page 2, Category A, I**
10 **believe you told me that the estimate that you**
11 **had for that category is the amount reflected on**
12 **Exhibit 461B, correct?**
13 MR. COHEN: Objection.
14 A. Correct.
15 MR. COHEN: I think that misstates the
16 testimony.
17 **Q. Let me ask my question again.**
18 **With respect to Category A, am I**
19 **correct that you told me that the estimate that**
20 **Milbank had for that category is the amount**
21 **reflected on Exhibit 461B; is that correct?**
22 A. The estimate that Milbank had was that
23 provided in the draft of Schedule A circulated
24 on Sunday, the 21st.
25 **Q. And that's Exhibit 461B?**
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2 A. That appears to be the case, yes.
3 **Q. And if you look at the third page of**
4 **Exhibit 461B, you see that lists a total figure**
5 **of \$49.9 billion?**
6 A. Correct.
7 **Q. Okay. And for Category B, looking**
8 **back to the Clarification Letter on page 1,**
9 **Category B, I believe you indicated the estimate**
10 **that Milbank had as of the closing was 1.9**
11 **billion; is that correct?**
12 A. Correct.
13 **Q. And for Category C, exchange-traded**
14 **derivatives and any property held to secure**
15 **those derivatives, that amount was uncertain, to**
16 **the best of your recollection; is that correct?**
17 A. Correct.
18 MR. STERN: Let's take a short break.
19 THE VIDEOGRAPHER: The time is now
20 11:48 A.M. We're now off the record.
21 (Recess.)
22 THE VIDEOGRAPHER: The time is now
23 12:04 P.M. We are now back on the record.
24 BY MR. STERN:
25 **Q. Let's look back at Exhibit 26, Tab C,**
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1 D. O'DONNELL
2 **page 5, please. Do you see on page 5 a**
3 **paragraph 13 labeled Barclays Repurchase**
4 **Agreement?**
5 A. Yes, I see that paragraph.
6 **Q. Going back to the meetings over the**
7 **weekend at Weil among the key parties, do you**
8 **know whether the subject matter of this**
9 **paragraph was discussed in those meetings that**
10 **Milbank attended?**
11 MR. COHEN: The non-privileged
12 meetings?
13 MR. STERN: Yes.
14 A. As previously testified, with respect
15 to other parts of this letter, no, I don't know,
16 whether this specific paragraph was discussed in
17 those meetings.
18 **Q. Do you have any reason to believe that**
19 **it was not discussed at those meetings?**
20 A. I have no reason to believe that it
21 was not discussed.
22 (Exhibit 499, a document bearing Bates
23 Nos. WGM-LEHMAN-E 00002746 through 2766,
24 marked for identification, as of this date.)
25 **Q. We've handed you a document that we've**
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1 D. O'DONNELL
2 **marked as Exhibit 499, and I'll ask you to take**
3 **a look at it and identify it for us, if you**
4 **would.**
5 **(Document review.)?**
6 A. I've reviewed the document.
7 **Q. Can you tell us what it is?**
8 A. It appears to be an e-mail forwarding
9 to Crayton Bell a draft of the Clarification
10 Letter on 9/19/2008.
11 **Q. Let me mark another document as the**
12 **next exhibit, and I'll ask you to review that**
13 **and identify that for me as well.**
14 **(Exhibit 500, a document bearing**
15 **HLHZ0020162 through 182, marked for**
16 **identification, as of this date.)**
17 MR. COHEN: Is this Exhibit 500?
18 MR. STERN: Yes.
19 MR. COHEN: I'll note for the record
20 Exhibit 500 appears to be three documents
21 clipped together.
22 MR. STERN: They should be stapled
23 together. It's all a part of one document.
24 We'll staple the exhibit.
25 **(Document review.)**
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<p>1 D. O'DONNELL</p> <p>2 A. I've reviewed the document.</p> <p>3 Q. What is it?</p> <p>4 A. It appears to be another draft of the</p> <p>5 Clarification Letter forwarded to Crayton Bell</p> <p>6 on Saturday afternoon, September 20.</p> <p>7 (Exhibit 501, a document bearing Bates</p> <p>8 Nos. WGM-LEHMAN-E 00013962 through 13982,</p> <p>9 marked for identification, as of this date.)</p> <p>10 Q. We're marking another exhibit Exhibit</p> <p>11 501, and I'll ask you the same question after</p> <p>12 you have a chance to review it.</p> <p>13 (Document review.)</p> <p>14 A. I've reviewed the document.</p> <p>15 Q. Do you know what it is?</p> <p>16 A. It appears to be an e-mail attaching</p> <p>17 yet another draft of the Clarification Letter</p> <p>18 forwarded by Bob Messineo to David Murgio on</p> <p>19 Sunday -- on Sunday, September 21, at 12:39 P.M.</p> <p>20 Q. Okay. At the top, there's an</p> <p>21 instruction from David Murgio to Ann Peterson at</p> <p>22 Weil: "Please print and copy 15 of each of</p> <p>23 these and hold by your desk. Thanks."</p> <p>24 Do you know whether, while Mr. Bell</p> <p>25 was at Weil on September 21, he received a copy</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 D. O'DONNELL</p> <p>2 of the drafts that we marked as Exhibit 501?</p> <p>3 A. I do not know whether Mr. Bell</p> <p>4 received a copy of this draft.</p> <p>5 Q. He may have, but you simply don't</p> <p>6 know?</p> <p>7 A. Correct.</p> <p>8 Q. Okay.</p> <p>9 (Exhibit 502, a document bearing Bates</p> <p>10 Nos. WGM-LEHMAN-E 00013889 through 13899,</p> <p>11 marked for identification, as of this date.)</p> <p>12 Q. We've marked another document as</p> <p>13 Exhibit 502. I'll ask you to take a look at it</p> <p>14 and then I'll ask you to identify it.</p> <p>15 (Document review.)</p> <p>16 A. I've reviewed the document.</p> <p>17 Q. Can you identify it?</p> <p>18 A. It appears to be an e-mail from David</p> <p>19 Leinwand at Cleary Gottlieb circulating another</p> <p>20 draft of the Clarification Letter at 9:23 A.M.</p> <p>21 on September 21.</p> <p>22 Q. And at the top, there's an instruction</p> <p>23 again from David Murgio to Ann Peterson:</p> <p>24 "Please print and staple ten of these."</p> <p>25 Do you know whether, while Mr. Bell</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 D. O'DONNELL</p> <p>2 was present at Weil on September 21, he received</p> <p>3 a copy of this material that we've marked as</p> <p>4 Exhibit 502?</p> <p>5 A. I do not know.</p> <p>6 Q. You don't know one way or the other?</p> <p>7 A. Correct.</p> <p>8 Q. So it's possible that he did, but you</p> <p>9 don't know?</p> <p>10 A. Correct.</p> <p>11 (Exhibit 503, a document bearing</p> <p>12 Bates Nos. HLHZ0019919 through 19930, marked</p> <p>13 for identification, as of this date.)</p> <p>14 Q. We've marked another document as</p> <p>15 Exhibit 503, and I'll ask you to review this and</p> <p>16 identify it for us.</p> <p>17 (Document review.)</p> <p>18 A. I've reviewed the document.</p> <p>19 Q. And what is it?</p> <p>20 A. It appears to be an e-mail from David</p> <p>21 Murgio attaching, I believe, though it's hard to</p> <p>22 tell from the form of e-mail, the -- the -- a</p> <p>23 copy of what purports to be the final version of</p> <p>24 the Clarification Letter.</p> <p>25 Q. Before the closing on September 22,</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 D. O'DONNELL</p> <p>2 did Mr. Bell or anybody from Milbank suggest to</p> <p>3 Weil that the final agreements should include</p> <p>4 valuation conditions for the purchased assets</p> <p>5 and assumed liabilities?</p> <p>6 A. No.</p> <p>7 Q. Before the closing on September 2,</p> <p>8 did -- I'm sorry, before the closing on</p> <p>9 September 22, did Mr. Bell or anyone from</p> <p>10 Milbank suggest to Weil that the final agreement</p> <p>11 should include a cap on the value of purchased</p> <p>12 assets?</p> <p>13 A. No.</p> <p>14 Q. Before the closing on September 22,</p> <p>15 did Mr. Bell or anybody else from Milbank</p> <p>16 suggest to Weil that the final agreement should</p> <p>17 include a floor or limit or cap on the value of</p> <p>18 assumed liabilities?</p> <p>19 A. No.</p> <p>20 Q. Before the closing on September 22,</p> <p>21 did Mr. Bell or anybody else from Milbank</p> <p>22 suggest to Weil that the final agreement -- the</p> <p>23 final agreement should include representations</p> <p>24 and warranties concerning the value of purchased</p> <p>25 assets and the value of the consideration under</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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the final agreement?

A. No.

Q. And before the closing on September 22, did Mr. Bell or anybody else from Milbank suggest to Weil that the final agreement should include true-up provisions with respect to the value of the purchased assets or the value of the consideration under the final agreement?

A. No.

Q. Now, when Weil made a motion for approval of the sale, did Milbank review the Weil Gotshal motion?

A. Can you be more specific about the motion you're referring to?

Q. I'll hand you what has previously been marked as Exhibit 440. I've handed you what has previously been marked as Exhibit 440, and this is Debtors' Motion to (A) Schedule a Sale Hearing; (B) Establish Sales Procedures; (C) Approve a Breakup Fee; and (D) Approve the Sale of the Purchased Assets and the Assumption and Assignment of Contracts Relating to the Purchased Assets. Do you see that?

A. Yes, I do.

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Q. Did Milbank review these papers at the time they were served?

A. Yes, it did.

Q. What understanding did Milbank have at the time concerning the extent of Barclays' obligation under the original APA to make cure payments?

MR. TECCE: Objection.

MR. COHEN: I object to the extent that the question calls for legal advice, privileged communications and attorney work product, and instruct Mr. O'Donnell not to answer with respect to those areas.

If you have an understanding from a non-privileged source, you can speak to that.

A. Based on the representations made by the Debtors at both the bidding procedures and the Sale Hearing, we understood that the APA required Barclays to make certain cure and compensation payments.

Q. Was it Milbank's understanding that Barclays had the right, but not the obligation, to take assignment of contracts and leases which

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are -- were designated for assumption and assignment by the -- by Barclays?

MR. COHEN: I'll instruct Mr. O'Donnell to limit his answer to non-privileged sources and not reveal privileged communications or attorney work product in his response.

A. Based on representations at the hearing on the 19th and the terms of the Sale Order itself, yes, that was our understanding.

Q. Did Milbank understand that there would be certain filings made in connection with cure amounts for what were labeled Closing Date Contracts?

MR. COHEN: Hold for a second.

Give the same limitation. Mr.

O'Donnell can reveal understandings that Milbank may have received from non-privileged sources, but internal communications and attorney work product should not be revealed in your answer.

A. Yes, I believe that there was a procedure originally prescribed in the motion that was superseded by discussions amongst

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parties on the 19th as disclosed to the Court by Mr. Miller or Ms. Fife.

Q. Do you know whether -- withdrawn. Did Milbank review the filing that was made with respect to closing date contracts when that filing was made?

MR. COHEN: You can answer that yes or no.

A. I need clarification as to what specific filing you're referring to.

Q. Do you know whether a filing was made before the Sale Approval Hearing identifying Closing Date Contracts that Barclays would assume?

A. Yes, I believe that there was one.

Q. Did Milbank review that filing?

MR. COHEN: You can answer that yes or no.

A. Yes.

Q. Okay. Did that filing list cure amounts for the Closing Date Contracts?

MR. COHEN: Objection. The document speaks for itself. If you have a recollection as to what was in that

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1 D. O'DONNELL
2 document, you can answer yes or no.
3 A. Yes, it did list cure amounts.
4 Q. Did Milbank add up those amounts?
5 MR. COHEN: Instruct the witness not
6 to answer. It's attorney work product.
7 Q. Was Milbank aware of the total amount
8 of those listed cure amounts?
9 MR. TECCE: Same objection. To the
10 extent that it comes from a non-privileged
11 source, you can answer.
12 A. Based upon representations made at the
13 hearing by Mr. Miller, yes.
14 Q. Do you recall the total amount of the
15 cure payments for the Closing Date Contracts
16 that were listed on the filing that was made
17 before the Sale Approval Hearing?
18 MR. COHEN: So the question is do you
19 remember the number in a publicly filed
20 motion?
21 MR. STERN: Yes.
22 MR. COHEN: Object to the form.
23 A. I don't remember, one, whether there
24 was a total number listed; and, if there was, I
25 don't remember what it was.

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1 D. O'DONNELL
2 Q. Assuming that there was no total
3 number listed, did Milbank do anything to add up
4 the amounts that were listed?
5 MR. COHEN: Instruct the witness not
6 to answer on the basis of work product.
7 Q. Is that something Milbank could have
8 done at the time?
9 MR. COHEN: You can answer that yes or
10 no.
11 A. Yes.
12 Q. Did Milbank have an understanding
13 that, within 60 days of the closing, there would
14 be a further filing with respect to designated
15 contracts and proposed cure amounts for those
16 contracts?
17 MR. COHEN: I instruct the witness to
18 limit his response as to Milbank's
19 understanding to any understanding it
20 received from non-privileged sources.
21 A. Yes.
22 Q. And did Milbank review that filing
23 when it was made?
24 MR. COHEN: You can answer yes or no.
25 A. Yes.

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1 D. O'DONNELL
2 Q. And did Milbank total the cure amounts
3 that were listed in that filing?
4 MR. COHEN: I instruct the witness not
5 to answer on the basis of attorney work
6 product.
7 Q. Is that something Milbank could have
8 done?
9 MR. COHEN: You can answer yes or no.
10 A. Yes.
11 Q. As of the Sale Hearing, did Milbank
12 understand that Barclays was assuming certain
13 obligations to pay certain employee benefits and
14 compensation?
15 MR. COHEN: Instruct the witness to
16 limit his response as to Milbank's
17 understanding to any understanding it
18 received from non-privileged sources.
19 A. Yes.
20 Q. Based on Milbank's review of the
21 original APA, did Milbank understand that the
22 amount of Barclays' compensation obligation
23 would depend on the number of transferred
24 employees taking employment with Barclays?
25 MR. COHEN: I instruct the witness not

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1 D. O'DONNELL
2 to answer on the basis of attorney work
3 product.
4 Q. After the closing on September 22, was
5 Milbank aware of the deadline by which the
6 Committee would need to make any motion for
7 reconsideration of the Sale Order?
8 MR. COHEN: Objection. Calls for a
9 legal conclusion.
10 A. Yes.
11 Q. And what was that deadline?
12 MR. COHEN: Objection. Calls for a
13 legal conclusion.
14 A. Pursuant to the rules, it would have
15 been ten days after entry of the order.
16 Q. Was Milbank aware after the closing or
17 did Milbank monitor what the final deadline
18 would be for appealing the Sale Order?
19 MR. COHEN: Objection. I instruct the
20 witness not to answer on the basis of
21 attorney work product.
22 Q. Was Milbank aware that a motion for
23 reconsideration of the Sale Order had been made?
24 MR. COHEN: You can answer yes or no.
25 A. Yes.

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Q. And was Milbank aware of how that affected the time by which parties would have to appeal the Sale Order?

MR. COHEN: I instruct the witness not to answer on the basis of attorney work product.

Q. Am I correct that the Committee did not object to approval of the sale transaction at the September 19 Sale Approval Hearing?

MR. COHEN: You can answer yes or no.

A. Yes.

Q. What factors did the Committee consider in deciding not to object?

MR. COHEN: I instruct the witness not to answer on the basis of attorney-client privilege and attorney work product.

Q. Am I correct that the Committee did not make a motion for reconsideration of the Sale Approval Order?

MR. COHEN: You can answer yes or no.

A. Yes.

Q. What factors did the Committee take into consideration in determining whether or not to make such a motion?

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MR. COHEN: I instruct the witness not to answer on the basis of attorney-client privilege and attorney work product.

Q. Am I correct that the Committee did not appeal the Sale Approval Order?

MR. COHEN: You can answer yes or no.

A. Yes.

Q. What factors did the Committee take into consideration in deciding not to appeal the Sale Approval Order?

MR. COHEN: I instruct the witness not to answer on the basis of attorney-client privilege and attorney work product.

(Discussion off the record.)

THE VIDEOGRAPHER: That is the end of tape number 2. The time is 12:34 P.M. We're now off the record.

(Luncheon recess.)

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AFTERNOON SESSION

THE VIDEOGRAPHER: This is the start of tape number 3. The time is now 1:20 P.M.

We are now back on the record.

DENNIS C. O'DONNELL, resumed and

testified as follows:

EXAMINATION BY (Cont'd.)

BY MR. STERN:

Q. I'd like to go back to September 22 after Milbank had received the Final Purchase Agreement.

At that point did Milbank have any certainty concerning the value of the purchased assets in the Final Purchase Agreement?

A. No.

MR. TECCE: Objection to the form of the question to the extent that it asks him to reveal privileged information or work product.

Q. At that point, did Milbank have any certainty concerning the value of the consideration, including assumed liabilities, in the Final Purchase Agreement?

A. No.

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Q. At that point did Milbank have any certainty concerning whether the value of the consideration, including purchased assets, was perfectly balanced with or a wash with the value of purchased assets?

A. No.

Q. Did Milbank believe at that point, that is, September 22, after receiving the Final Purchase Agreement, that there was a certain cap on the value of the purchased assets in the Final Purchase Agreement?

MR. COHEN: Objection. I instruct the witness not to answer. Calls for legal advice and attorney work product.

Q. Did Milbank believe upon receiving the Final Purchase Agreement that there was a \$47.4 billion cap on the value of purchased assets in the Final Purchase Agreement?

MR. COHEN: Instruct the witness not to answer. Calls for privileged communications and attorney work product.

Q. When Milbank received the Final Purchase Agreement on September 22, did Milbank have any concern that the agreement had not been

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authorized by the Court?

MR. COHEN: Instruct the witness not answer. Calls for privileged communications and attorney work product.

Q. Did Milbank ever express to Weil after receiving the Final Purchase Agreement on September 22 a concern that the Final Purchase Agreement had not been authorized by the Court?

A. In what time period?

Q. In the period September 22 through September 30.

A. No.

Q. And on September 22 itself, upon receiving the Final Purchase Agreement, Milbank did not express any concern to Weil that the Final Purchase Agreement had not been authorized by the Court; is that right?

A. Correct.

Q. As of receiving the Final Purchase -- withdrawn. As of September 22, upon receiving the Final Purchase Agreement, did Milbank ever express any concern to Weil that the transaction as reflected in the Final Purchase Agreement was not a wash?

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A. Milbank repeated requests for access to the final schedules to address that amongst other issues.

Q. The final schedules are those for Schedule A and Schedule B?

A. Correct.

Q. Based on the estimated values that Milbank had as of that time, as of September 22, for Schedule A and Schedule B assets, based on that information, did Milbank ever say to Weil that Milbank was concerned that the transaction was not a wash?

MR. COHEN: Objection. Vague as to "estimated values."

A. Houlihan continued to review the schedules, had raised questions about the schedules. We had passed on to Weil our concerns and questions about the schedules.

Q. Did anybody from Milbank ever say to anybody at Weil on September 22 that Milbank was concerned that the Final Purchase Agreement did not reflect a balanced transaction or a wash?

MR. COHEN: Object to the form.

A. Milbank had questions and raised those

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questions with Weil.

Q. Did anybody from Milbank ever say to anybody at Weil on September 22 that Milbank was concerned that the Final Purchase Agreement did not reflect a balanced transaction or a wash?

MR. COHEN: Objection. Asked and answered. Object to the form.

A. As previously testified, Milbank had concerns and was asking questions about, amongst others, those issues.

Q. Who expressed those concerns on behalf of Milbank?

A. Timeframe?

Q. September 22.

A. On September 22, Crayton Bell specifically asked for the final schedules.

Q. Aside from asking for the final schedules, did Crayton Bell or anybody else from Milbank express to Weil a concern that the Final Purchase Agreement did not reflect a balanced transaction or a wash?

A. Are we talking about after the closing or prior to the closing?

Q. On September 22.

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A. The discussions with Weil on the morning of the 22nd that arose out of the review of the schedules may have alluded to that concern.

Q. Do you know whether they did?

A. Not in the precise terms that you've framed the question.

Q. Did Milbank believe as of September 22 that the final transaction was supposed to be a balanced transaction or a wash between purchased assets and consideration?

MR. COHEN: You can answer that to the extent you have a non-privileged source that would reflect Milbank's belief or would have informed Milbank's belief.

A. Yes.

Q. What steps did Milbank take before the closing to assure that the Final Purchase Agreement would actually reflect a balanced transaction between purchased assets and consideration?

MR. COHEN: Instruct the witness not to answer on the basis of attorney-client privilege and attorney work product.

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Q. What steps did Milbank take in communicating with Weil Gotshal to assure that the Final Purchase Agreement would actually reflect a balanced transaction?

A. As previously testified, Milbank, in conjunction with Houlihan, requested information relating to Schedule A.

Q. Aside from requesting information, did Milbank ever do anything to suggest that the Final Purchase Agreement reflect a balanced transaction?

MR. COHEN: I'll instruct the witness to limit his response to non-privileged communications or actions.

A. Milbank reported to Weil that Houlihan could not get comfortable with the numbers as reflected in the draft of the Schedule A that they had reviewed.

Q. What does that have to do with Milbank suggesting changes to the Final Purchase Agreement to assure that it would be a balanced transaction?

MR. COHEN: Object to the form.

A. Can you repeat the question?

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Q. Did Milbank ever make any suggestions to Weil concerning the need for representations and warranties or valuation conditions for the Final Purchase Agreement?

MR. COHEN: Objection. Asked and answered.

A. And the answer is no.

Q. In the absence of those contractual conditions, how could Milbank be assured that the Final Purchase Agreement would provide for a balanced transaction?

MR. COHEN: Hold on for a second.

MR. TECCE: I'm going to object to the extent that his answer involves work product or attorney-client communications.

MR. COHEN: I'll join that objection and add it calls for speculation.

A. By recourse to Houlihan and the evaluation of the numbers that Houlihan was undertaking.

Q. But I thought you told me those figures were all uncertain at the time, isn't that right?

A. They were, yes. Correct.

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Q. There was uncertainty concerning the value of the purchased assets, correct?

A. Correct.

Q. There was uncertainty concerning the value of the assumed liabilities, correct?

A. Correct.

Q. And Milbank had a transactional lawyer, Crayton Bell, present at Weil before the closing, correct?

A. Correct.

Q. And Mr. Bell was available to comment on the Final Purchase Agreement, correct?

A. Correct.

Q. Mr. Bell knew that, in order to have a balanced transaction, it is customary to provide for representations and warranties and valuation conditions, isn't that right?

MR. COHEN: Objection. Calls for speculation.

A. And I don't know what Mr. Bell knew in that context.

Q. He's a highly qualified transactional lawyer, correct?

A. He is, yes.

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Q. He's experienced, correct?

A. Correct.

Q. Do you know whether he's ever prepared a purchase agreement providing for a balanced transaction or a balance sheet transaction?

MR. TECCE: Objection to the form of the question.

A. The answer is I don't know specifically, but I assume that's the case, yes.

Q. And do you know in those circumstances whether Mr. Bell would know that representations and warranties and valuation conditions were essential in order to provide for a contractually enforceable balanced transaction?

MR. COHEN: Objection. Calls for legal conclusion and calls for speculation.

A. And nothing about this transaction was traditional or customary. From the word go, it was different. So whatever his experience, you know, his expectations or experiences were with respect to other transactions would not necessarily be applicable to this situation.

Q. I see. So it's your testimony that if Mr. Bell knew from prior transactions that

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representations and warranties and valuation conditions were essential to create a balanced transaction, he would not apply that experience to this transaction?

MR. COHEN: Objection. Calls for a hypothetical and speculation.

Q. Is that your testimony?

A. He might try.

Q. Did he try?

A. If given the opportunity, he might have tried, yes.

Q. Well, did he try?

A. I don't know specifically whether he raised those specific -- I think I've actually already testified that he did not, he did not make those suggestions.

Q. And was the Committee concerned that the transaction be a balanced transaction?

MR. TECCE: Objection to the form of the question. I'll instruct the witness not to answer on the grounds that it will disclose attorney-client communications and attorney work product.

Q. Well, if the Committee genuinely

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believed at the time that the transaction was to be a balanced transaction, wouldn't Mr. Bell have made those suggestions?

MR. COHEN: Objection. Calls for speculation.

A. If given the opportunity, he might have.

Q. When you say "given the opportunity," what do you mean?

A. As previously testified, we, over the course -- Milbank over the course of that weekend spent a great deal of time waiting around and seeking to participate in discussions that were going on around us. We did not have the opportunity to participate fully in the negotiations that weekend.

Q. Well, Mr. Bell did receive drafts of the Clarification Letter, correct?

A. We know that he received a draft on Saturday afternoon, yes.

Q. And he may have also received drafts on Sunday?

MR. COHEN: Objection. Calls for speculation.

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Q. Correct?

A. It's possible that he received drafts on Sunday afternoon, yes.

Q. Didn't Mr. Bell have an opportunity to make his suggestions directly to the Weil lawyers?

A. He engaged them in discussions, or attempted to engage them in discussions, but since we were not fully engaged in the negotiation, it was difficult for us to comment effectively on the document.

Q. Was it essential to the Committee's decision not to object to the transaction that the transaction be a wash?

MR. COHEN: I instruct the witness not to answer on the basis of attorney-client privilege and attorney work product.

Q. From September 22 through September 30, did anybody from Milbank ever discuss with anybody from Weil whether it would be necessary to return to Judge Peck to address any aspects of the transaction?

A. No.

Q. Why not?

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MR. COHEN: I instruct the witness not to answer on the basis of attorney-client privilege and attorney work product.

Q. I'd like to turn back to Exhibit 26, and I believe that you testified earlier that much was uncertain concerning the value of purchased assets; is that correct?

A. Correct.

Q. And to be more precise about that, let's look at the APA, the original APA, under Tab A, and specifically page 6. And on page 6 you see there's a definition of "purchased assets"?

A. I see that definition.

Q. And it says, "'Purchased Assets' means all of the assets of Seller and its Subsidiaries used in connection with the Business (excluding the Excluded Assets), including," and then it lists Categories (a) through (s). Do you see that?

A. Yes, I see that.

Q. Did Milbank understand at the time that the purchased assets could include assets other than those specifically enumerated in

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items (a) through (s)?

MR. COHEN: You can testify to the extent that that understanding came from non-privileged sources or means. To the extent it comes from privileged sources or analysis, I instruct you not to answer.

A. Yes.

Q. Let's go through these items (a) through (s). Item (a), the retained cash, as of the Sale Hearing, did Milbank have any understanding as to what the amount of that would be?

MR. COHEN: With respect to this line of questioning, (a) through (s), I'll have a standing instruction that you can testify as to non-privileged sources of that understanding, but privileged analysis or sources I'll instruct you not to answer.

MR. STERN: Yeah, and the questions --

MR. COHEN: And that will apply through (a) through (s).

Q. Right, and the questions are intended to ask about information derived from Lehman or Barclays or from some other source other than a

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privileged communication.

A. Based on the terms of the document itself, the answer is yes.

Q. And what was that understanding?

A. Retained cash is defined in the document as an amount that is -- on page 2 of the document, under Excluded Assets, to be all cash, cash equivalents, bank deposits or similar cash items of LBI and its subsidiaries other than the \$1.3 billion in cash, cash equivalents, bank deposits.

Q. So, as of the Sale Approval Hearing, Milbank understood that the retained cash amount was 1.3 billion?

A. No, that's not my testimony.

Q. Okay. What is your testimony?

A. It's all cash other than 1.3 billion.

Q. I see. And was this provision ultimately removed in the Final Purchase Agreement?

A. Based on the terms of the Clarification Letter, yes.

Q. And that's something that Milbank understood before the closing?

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A. Based on its review of the Clarification Letter, yes.

Q. Looking --

MR. COHEN: Be careful in your answers. You should be revealing non-privileged sources, not Milbank's analysis of the documents and its work product.

Q. Okay. Category (b), all deposits, et cetera. As of the closing, did Milbank have any estimate of the value of this category of purchased assets?

MR. COHEN: You can testify to the extent a non-privileged source provided Milbank with an estimate.

A. No.

Q. So that was uncertain?

A. Correct.

Q. With respect to Category (c), the transferred real property leases, did Milbank receive from non-privileged sources an estimate of the value of that category?

A. No.

Q. So that was uncertain as well?

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A. Correct.

Q. Now, Category (d), was that ultimately replaced in the Clarification Letter? And we can look to the Clarification Letter if you want, Tab (c), page 1.

MR. COHEN: The documents are going to speak for themselves. The witness should not be here interpreting the contracts on the fly.

If you have an understanding from a non-privileged source where a non-privileged source told you that, you can repeat that information.

The internal Milbank analysis I'll instruct you not to answer, and you should not be giving your own analysis here on the record in real-time.

Q. Let me see if I can simplify it. Did, upon receiving the Clarification Letter, Tab C, did Milbank understand, based on Section 1(a)(ii) that clause (D) of the definition of "purchased assets" was being replaced?

MR. COHEN: Same instruction.

Do you understand the limitations?

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2 A. Other than as a result of privileged
3 communication or work product, no.
4 Q. Okay. Let's turn to Category (e). As
5 of the Sale Hearing -- I'm sorry, let me turn
6 you back to Tab A, page 6. Tab A, page 6, item
7 (e), "50 percent of each position in the
8 residential real estate mortgage securities."
9 As of the Sale Approval Hearing, did Milbank
10 have an estimate of the value of that category
11 of purchased assets?
12 A. Yes.
13 Q. And what was that estimate?
14 A. I believe it was \$6 billion.
15 Q. \$6 billion in total or 50 --
16 A. I believe it was \$6 billion in total.
17 Q. And so 50 percent would be 3 billion?
18 A. Yes, based on representations made at
19 the hearing on the 19th.
20 Q. Category (f), the furniture and
21 equipment, did Milbank have an estimated value
22 for that category?
23 A. No.
24 Q. (g), the purchased intellectual
25 property, did Milbank have an estimate of the
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2 assumption of liabilities, do you see that?
3 A. Yes, I do.
4 Q. It says, "On the terms and subject to
5 the conditions set forth in this Agreement, at
6 the Closing, Purchaser shall assume, effective
7 as of the closing, and shall timely perform and
8 discharge in accordance with their respective
9 terms, the following Liabilities of Seller and
10 its Subsidiaries (collectively, the 'Assumed
11 Liabilities')." Looking at Category (a), "all
12 Liabilities of Seller incurred, after the
13 Closing, in connection with the Business," did
14 Milbank have an estimate of the amount of that
15 liability?
16 MR. COHEN: With respect to these
17 items, and if we go through all of the items
18 under 2.3, my instruction will be the same:
19 You can testify as to estimates
20 received from non-privileged sources, but
21 attorney work product or the Committee's
22 financial advisors, I will instruct you not
23 to answer as to their analysis and
24 information.
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2 value of that category of purchased asset?
3 A. No.
4 Q. (h), the purchased contracts, did
5 Milbank have an estimate of the value of that
6 category of purchased asset?
7 A. No.
8 Q. Looking at item (q) on the next page,
9 all past and present goodwill and other
10 intangible assets, did Milbank have an estimate
11 of the value of that purchased asset?
12 A. Yes.
13 Q. And what was the estimate that Milbank
14 had of that?
15 A. Based on representations made at the
16 hearing, Lehman was attributing a value of \$250
17 million to the goodwill of LBI.
18 Q. As to the intangible assets, did
19 Milbank ever receive an estimate of the value of
20 intangible assets?
21 A. No.
22 Q. So that was uncertain?
23 A. Correct.
24 Q. Let's turn to page 11 of the original
25 APA, and specifically on page 11, Section 2.3 on
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2 Q. So as to category (a), did Lehman or
3 Barclays ever give you an estimate of that
4 category?
5 A. No.
6 Q. Okay. As to Category (b), "all
7 Liabilities of Seller under the Purchased
8 Contracts arising after...the date on which such
9 entity commenced a voluntary case or cases under
10 Chapter 11 or Chapter 7," did Lehman or Barclays
11 ever give you an estimate of the value of that
12 assumed liability?
13 A. No.
14 Q. Turning to item (d), "accounts payable
15 in the Ordinary Course of Business," et cetera,
16 did Lehman or Barclays ever give you an estimate
17 of the value of that assumed liability?
18 A. No.
19 Q. Okay. So that was uncertain?
20 A. Correct.
21 Q. Category (f), "all other Liabilities
22 to the extent related to the Business," et
23 cetera, did Lehman or Barclays ever give you an
24 estimate of that category of assumed liability?
25 A. No.
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Q. To your knowledge, did Houlihan do any work to estimate the value of the assumed liabilities we just went over?

A. You're referring to (a), (b) and (d)?

Q. (a), (b) --

A. (d).

Q. -- (d), (f), (h).

MR. TECCE: Caution the witness not to reveal any attorney-client communications or any attorney work product.

A. No.

Q. And going back to page 6, the purchased assets, did Houlihan do any work, to your knowledge, to estimate the value of the purchased assets described in categories (b), (c), (f), (g), (h) and (q)?

MR. TECCE: Same instruction.

A. Other than based on privileged communications, I don't know.

Q. Now, at some point after the closing, am I right that Milbank did receive the final versions of Schedule A and Schedule B?

A. Yes, you're correct.

Q. And did Milbank raise any concerns

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about those schedules with Weil or with Barclays representatives?

A. Timeframe?

Q. After the closing.

A. Yes, Milbank did receive what purported to be final versions of the schedules on or about the 25th of September, forwarded them to Barclays -- I mean to Houlihan, and asked Houlihan to continue its diligence on those documents, those schedules.

Q. Do you know whether the Schedule A that Milbank received on September 25 was different from the spreadsheet that Milbank had received over the weekend before the closing?

MR. COHEN: Object to the form.

Q. Or is that something that Houlihan analyzed?

A. That's something that Houlihan would have analyzed.

Q. Did Milbank ever express any concern to Weil that the final schedules were different from what had been described to Milbank over the weekend before the closing?

MR. COHEN: Objection. Vague.

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A. Milbank did ultimately raise concerns with Weil about the schedules and whether the numbers accorded with their understanding of the deal as presented over the weekend, yes.

Q. Okay. And what did Milbank say to Weil in that regard? What were the specific concerns?

A. Milbank ultimately conveyed to Weil the concerns that had emerged from Houlihan's analysis of the schedules.

Q. And what were those concerns?

A. That the numbers did not add up.

Q. What numbers did not add up?

A. That the amount of purchased assets appeared to be larger than the amount represented to the Committee and to the Court in connection with approval of the transaction.

Q. And did the schedules, the final Schedules A and B, reflect values?

A. Can you clarify your question?

Q. Well, did the final Schedule A and the final Schedule B contain -- reflect values for the assets listed on those schedules?

A. Can we refer to the -- strike that.

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Q. Do you know whether the final Schedule A and final Schedule B had any type of value, par value or otherwise?

A. I believe it did have a par value associated with each of the schedules.

Q. Was Houlihan looking at the par value when it raised its concern about the value of the assets reflected on Schedules A and B?

MR. COHEN: If you know. It's beyond the scope of the 30(b)(6).

MR. TECCE: I'll also object to the extent that it calls for work product.

A. Houlihan had been directed to evaluate the schedules, and Milbank was not apprized of the specific methodology they were using to do so.

Q. Okay. So when it comes to Houlihan's analysis of the schedule, Milbank has no non-privileged knowledge concerning that analysis; is that right?

A. That's correct.

Q. I'll hand you what has previously been marked as Exhibit 463B. I'll ask you to take a look at this, but my question will be whether

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<p>1 D. O'DONNELL</p> <p>2 this is a document that Milbank ever received.</p> <p>3 MR. COHEN: Is there a Bates-numbered</p> <p>4 version of this document? What is the</p> <p>5 source of it? It's not from our production.</p> <p>6 MR. STERN: It's a -- it's a document</p> <p>7 that was sent to certain Lehman people, so</p> <p>8 it comes out of their e-mail, and it's also</p> <p>9 a document we expect FTI to produce.</p> <p>10 MR. COHEN: So does that mean it came</p> <p>11 from the Lehman production?</p> <p>12 MR. STERN: Off the record.</p> <p>13 (Discussion off the record.)</p> <p>14 MR. STERN: Let's go back on the</p> <p>15 record.</p> <p>16 MR. COHEN: Would you repeat your</p> <p>17 question, please, or have the reporter read</p> <p>18 it back?</p> <p>19 MR. STERN: I don't think I've asked</p> <p>20 it yet.</p> <p>21 THE WITNESS: I'm still reviewing the</p> <p>22 document.</p> <p>23 Q. After you review it, I just want to</p> <p>24 ask you whether this is something Milbank ever</p> <p>25 received.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 D. O'DONNELL</p> <p>2 MR. COHEN: I think that was the</p> <p>3 question.</p> <p>4 (Document review.)</p> <p>5 A. I have reviewed the document, and I</p> <p>6 don't believe it is an e-mail that Milbank ever</p> <p>7 received.</p> <p>8 Q. Do you know whether Milbank ever</p> <p>9 received any part of this document?</p> <p>10 A. I believe that Milbank may have</p> <p>11 received page 2 of the attachment.</p> <p>12 Q. The Footnote A?</p> <p>13 A. Correct.</p> <p>14 Q. Did Milbank have an understanding of</p> <p>15 what that page represented?</p> <p>16 MR. TECCE: Objection to the form of</p> <p>17 the question.</p> <p>18 Q. Or would that have been Houlihan's</p> <p>19 responsibility or FTI's responsibility?</p> <p>20 A. It would have been Houlihan or FTI's</p> <p>21 responsibility.</p> <p>22 Q. At some point in October 2008, did</p> <p>23 Milbank lawyers attend a presentation by Alvarez</p> <p>24 & Marsal?</p> <p>25 A. You need to be more specific.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 D. O'DONNELL</p> <p>2 Q. Let me give you a copy of a document</p> <p>3 we've marked previously as Exhibit 464B. These</p> <p>4 are pages from a presentation that Alvarez gave</p> <p>5 to the Creditors Committee on October 8, 2008.</p> <p>6 I'll ask you -- it includes a list of</p> <p>7 subjects and then it includes certain pages from</p> <p>8 the presentation, and after you review it, I</p> <p>9 just want to ask if that is a presentation that</p> <p>10 Milbank attended.</p> <p>11 MR. COHEN: Is the exhibit the</p> <p>12 truncated version of this document?</p> <p>13 MR. STERN: Yes.</p> <p>14 MR. COHEN: Do you have a copy of the</p> <p>15 complete document if the witness needs to</p> <p>16 see it?</p> <p>17 MR. STERN: I don't know if we have</p> <p>18 one in the room, but we can get one if you</p> <p>19 want.</p> <p>20 MR. COHEN: Let's see if he needs it.</p> <p>21 This appears to be excerpts from a larger</p> <p>22 presentation.</p> <p>23 MR. STERN: Yes, it is.</p> <p>24 (Document review.)</p> <p>25 A. Can you repeat the question?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 D. O'DONNELL</p> <p>2 Q. The question is whether Milbank</p> <p>3 lawyers attended the presentation by Alvarez &</p> <p>4 Marsal on October 8?</p> <p>5 A. Yes.</p> <p>6 Q. And who from Milbank attended that?</p> <p>7 A. This was the first of a series of</p> <p>8 monthly in-person meetings with Alvarez & Marsal</p> <p>9 over the course of the case. It was likely a</p> <p>10 long list of Milbank attorneys involved in</p> <p>11 various aspects of the case. I assume Dennis</p> <p>12 Dunn, Luc Despins, potentially Paul Aronzon were</p> <p>13 there.</p> <p>14 Q. Let's look at the fourth page of the</p> <p>15 exhibit. It has a heading at the top</p> <p>16 Significant Transactions. Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. And then item A, it says, "Sale of</p> <p>19 Lehman Brothers, Inc., broker-dealers to</p> <p>20 Barclays (Fogarty)," do you see that?</p> <p>21 A. I do.</p> <p>22 Q. Did Milbank lawyers attend this part</p> <p>23 of the presentation?</p> <p>24 A. To the best of my recollection,</p> <p>25 Milbank attorneys were present throughout the</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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presentation.

Q. Did you personally attend?

A. I did, yes.

Q. Do you have any recollection personally of this part of the presentation?

A. I don't have any personal recollection of this part of the presentation being discussed at any length.

Q. Under "Assets Purchased" it lists "43.1 billion repo assets - book value per Lehman's stale marks; negotiated a \$5 billion reduction." Do you see that?

A. I do.

Q. At the time did Milbank have an understanding or was there any discussion at this presentation concerning the statement "book value per Lehman's stale marks; negotiated a \$5 billion reduction"?

MR. COHEN: Objection to the form. Compound.

To the extent you're going to answer the portion of the question that deals with an understanding, then it needs to be coming from a non-privileged source as opposed to TSG Reporting - Worldwide 877-702-9580

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one of the Committee's financial advisors, which may be the second part of the question, which was, was there any discussion at the presentation.

But again, I'll object to the form of the question as vague.

Q. So let me try to simplify it.

At this presentation did Alvarez explain what was meant by the phrase "book value per Lehman's stale marks"?

A. Alvarez made a presentation. Various members of the Alvarez team presented on various topics. I don't have a specific recollection of their presentation as to this topic, but presumably they would have walked through this slide, which probably would have been up on a screen during the course of the presentation.

Q. Do you have any recollection concerning what Alvarez may have explained concerning that phrase, "book value per Lehman's stale marks"?

A. No specific recollection, no.

Q. Any general recollection?

A. As I've previously testified, the

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issue of the valuation of the assets and the liabilities was an issue that we had questions and concerns about. Houlihan was taking the lead in that regard, and if anyone focused on this issue during the meeting, it would have been Houlihan.

Q. Do you recall whether Houlihan did ask questions concerning that phrase "book value per Lehman's stale marks"?

MR. COHEN: At the meeting?

Q. At the meeting.

A. No recollection as to whether they raised questions at the meeting.

Q. Okay. Did anyone at the meeting raise any questions concerning what was meant by the phrase "negotiated a \$5 billion reduction"?

A. I have no recollection of that specific phrase being discussed.

Q. Do you have any recollection as to whether that phrase caused any concern on the part of Milbank or Houlihan?

MR. COHEN: Instruct the witness not to answer on the basis of attorney work product.

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Q. At the meeting with Alvarez, did either Houlihan or Milbank express any concern relating to that phrase "negotiated a \$5 billion reduction"?

A. Express to whom?

Q. To Alvarez.

A. To my recollection, no.

Q. Sitting here today do you know what that phrase refers to?

MR. COHEN: Objection. Beyond the scope of the 30(b)(6).

Q. Go ahead.

A. It's highly ambiguous from my perspective sitting here today. It could mean one of many things.

Q. What are the things it could be?

MR. COHEN: Objection. Calls for speculation.

A. And I don't think it's my role here to speculate.

Q. Well, I'm asking you to.

MR. COHEN: You should not speculate.

If you know, you should answer. If you don't know, you should answer you don't

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know.

Q. Sitting here today what, as you read this phrase, "negotiated a \$5 billion reduction," what are your possible interpretations of that phrase as you sit here today?

MR. COHEN: Objection. Calls for speculation. If you know what that means, you can answer. If you don't know, answer you don't know.

A. This presentation was drafted by Alvarez. I don't know what they meant by that phrase.

Q. Aside from this presentation by Alvarez, have you heard that phrase before in connection with the sale transaction?

MR. COHEN: Objection. Vague as to time.

A. What timeframe are you talking about?

Q. At any time.

MR. COHEN: Objection. Overbroad.

A. After Quinn assumed responsibility for Barclays matters --

MR. TECCE: I would also like to
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caution him not to reveal the content of any attorney-client communications or other work product.

A. Based on my reading of the 60(B) Motion after the fact, yes.

Q. What is your understanding of the meaning of this phrase "negotiated a \$5 billion reduction" based on reading the Rule 60(B) Motion?

MR. COHEN: Objection. Vague.

A. Based on my after-the-fact reading of the 60(B) Motion, without any independent knowledge of the full investigation conducted by Quinn, one of the allegation in the 60(B) Motion is that there was a secretly negotiated \$5 billion reduction in the purchase price of the assets.

Q. At the time that this phrase was presented by Alvarez in their October 8 presentation, do you recall anybody in attendance expressing any concern or alarm based on this phrase?

MR. COHEN: I'll caution the witness to answer as to only non-privileged

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expressions of concern or alarm. Privileged communications and analysis are beyond the scope of this deposition. I would instruct you not to answer.

Q. This is at the meeting with Alvarez.

A. Based on other than privileged communications, no.

Q. After the presentation by Alvarez, did Milbank or Houlihan, to your knowledge, have any discussions with anybody acting on behalf of either Lehman or Barclays concerning this reference to negotiated a \$5 billion reduction?

A. Can you repeat the question?
(Record read.)

A. I need the question repeated again.
I'm sorry.
(Record read.)

A. As to Milbank, I don't have any knowledge that this specific phrase from this specific document was discussed with anyone at Barclays -- at Lehman or Weil.

Q. Okay. Putting aside this specific phrase, and focusing on the general concept of a negotiated \$5 billion reduction, however you

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want to phrase that, was there ever any discussion between Milbank or Houlihan on the one hand, to your knowledge, and representatives of Lehman or Barclays on the other hand?

A. As a general matter, the discussions between Milbank and Weil regarding the schedules related, generally speaking, to an approximate \$5 billion discrepancy, yes.

Q. And how was that?

Withdrawn. Explain that to me.

MR. COHEN: Objection. Vague.

Q. Explain to me how the discussions concerning the schedules related to a \$5 billion discrepancy.

A. Houlihan's analysis of the schedules to date or up until the point -- during the time when Milbank was still involved with the matter suggested that there was a mismatch between assets and liabilities of approximately \$5 billion.

Q. And when did those discussions between Houlihan and Weil concerning that discrepancy or mismatch begin?

A. In mid October 2008.

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Q. And this reference in the Alvarez presentation to negotiated \$5 billion reduction, is that the same concept for the same \$5 billion reduction referenced in the Committee's Rule 60 motion?

MR. COHEN: Objection. Beyond the scope of the 30(b)(6) --

Q. If you know.

MR. COHEN: -- notice.

The witness is not testifying on behalf of the firm on this. The firm does not represent the Committee in connection with the 60(B) Motion.

MR. STERN: So are you instructing him not to answer?

MR. COHEN: No, I'm telling you he's not testifying on behalf of the firm. You can answer the question, but it's of no evidentiary value for purposes of your subpoena.

MR. TECCE: Also, just with respect to the form of the question, you're referring to the presentation that was prepared by A&M.

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A. As I previously testified, I have no idea what A&M intended precisely by the phrase in question, so I can't tell you whether it is exactly the same issue that appeared later in the 60(B) Motion.

Q. It may be, but you don't know?

A. No basis to determine.

Q. One way or the other?

A. Correct.

MR. STERN: Let's take a short break.

THE VIDEOGRAPHER: The time is now 2:17 P.M. We're now off the record.

(Recess.)

(Exhibit 504, a document bearing Bates Nos. MTHM0012869 through 12871, marked for identification, as of this date.)

THE VIDEOGRAPHER: This is the start of tape number 4. The time is now 2:24 P.M. We are now back on the record.

BY MR. STERN:

Q. I've handed you a document that we've marked as Exhibit 504, and I'd ask you to take a look at it. It may make sense to read the e-mail string from the back, and then I'll have

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some questions.

I want to focus I think primarily on the e-mail at the bottom of the first page, the Luc Despins e-mail, 10/13, 3:47 P.M., but why don't you read the whole thing.

(Document review.)

A. I've reviewed the e-mail.

Q. Okay. Let's focus on the Luc Despins e-mail October 13, 2008, 3:47 P.M. on the first page, and he writes to Ms. Fife, "Lori, this is not in connection with sealing motion (although I want to know more about the schedules before that issue is up before the Court), but rather our concern is with respect to the securities which were transferred. Houlihan has reviewed them and cannot even come close to the amount which was announced in court (I think it was \$47.4 billion) and there is also a discrepancy on the liability side (although it could be -- it could but much smaller than the issue on the asset side). Houlihan's view would indicate that the securities transferred could be worth billions more than \$47.4 billion. There may very well be a logical explanation for all of

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this, which is why the first meeting is just to explore the issues."

Was there a meeting that followed up from this e-mail?

A. Yes.

Q. And who attended that meeting?

A. From Milbank, Matthew Barr and Evan Fleck.

Q. And who else?

A. People from Houlihan, I believe Sol Burian and/or Mike Fazio.

Q. And who else attended?

A. From Weil, Harvey Miller and Lori Fife.

Q. Who else attended the meeting, if anybody?

A. I think that's it.

Q. And what was discussed at the meeting concerning the schedules and the values in the schedules?

A. Mr. Despins' e-mail I think summarizes the agenda for the meeting and that was the substance of the discussion at the meeting.

Q. Okay. And at the meeting did Houlihan

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outline its analysis of the securities and why it was concerned that the securities transferred could be worth billions more than the \$47.4 billion?

A. I need to qualify my last answer to suggest that I'm not sure if Houlihan was at the initial meeting to which I am referring. It may have been lawyers only.

Q. Was there any discussion at that meeting concerning the analysis that Houlihan had done?

A. The whole point of the meeting as outlined in Mr. Despins' e-mail was to discuss Houlihan's analysis, yes.

Q. And what was said about Houlihan's analysis?

A. In substance, what is presented in the e-mail; that there was a disconnect between the numbers presented at the final hearing, the hearing approving the sale, and the numbers disclosed in the final schedules.

Q. At the meeting did anybody explain the basis of Houlihan's analysis and point out what the disconnection was?

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MR. COHEN: Objection. Vague as to basis.

MR. STERN: I don't understand the objection.

MR. COHEN: Do you mean what Houlihan did, the work they did, the details of their work?

MR. STERN: Yeah.

MR. COHEN: I don't understand what "basis of analysis" is.

MR. STERN: That's a much better question.

MR. COHEN: Try it. It's --

Q. That's a much better question. I'll adopt that question.

A. Not in excruciating detail, but yes, that Houlihan had evaluated the schedules and could not reconcile the numbers to the numbers they understood to be the numbers approved by the Court.

Q. And what was said about the work that Houlihan did and the details of their work?

A. Again, since I don't believe Houlihan was in attendance, it was limited to a lawyer's

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summary of their understanding of Houlihan's findings to date.

Q. Did Houlihan reflect those findings in writing?

A. Not for purposes of this meeting, no.

Q. So nothing in writing was presented at that meeting?

A. Correct.

Q. And what was the -- what was the work that Houlihan had done that was discussed?

A. They had reviewed the schedules, which are hundreds of pages long, and had conducted an, essentially, a evaluation analysis of the schedules to determine what the real value of the assets transferred was.

Q. In doing that did they -- did Houlihan reference certain pricing sources for the assets?

MR. COHEN: I would instruct the witness not to get into the details of what Houlihan did. That's work product that has not been shared.

Q. Well, did anybody at this meeting explain the work that Houlihan had done in terms

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of pricing the assets?

A. I don't believe so, and the meeting was intended to, as indicated in Mr. Despins' e-mail, to be an initial meeting to explore the issues. It was not intended to be a full working session. If that had been the case, it would have involved financial advisors from both sides.

Q. Okay. Was there a subsequent -- was there a follow-up meeting to this initial meeting to address those issues?

A. Not prior to Milbank's withdrawal from involvement in these issues.

Q. And when was that?

A. That was in late November.

Q. Late November Milbank withdrew?

A. Milbank, over the course of a period of time in October and November, gradually transitioned responsibility for this matter to Quinn.

Q. And why was that?

A. Out of an abundance of caution over concerns that their initial questions and concerns might ultimately yield a reason to

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bring litigation with respect to the matter. No decisions or conclusions had been reached in that regard, but given Milbank's representation of Barclays in other contexts, we deemed it prudent to involve conflicts counsel as we proceeded down this path.

Q. Do you know whether there was -- does Milbank know whether subsequent to this initial meeting in October, whether there was a subsequent meeting that Milbank did not attend to address these issues?

A. Once Milbank withdrew from representation of the Committee with respect to these issues, we did not participate in any meetings, were not apprized of meetings, were not -- were not in the loop on those discussions. So the answer is no.

Q. Before Milbank withdrew from handling these issues, did Milbank have any other communications with Lehman representatives concerning these issues?

MR. COHEN: Objection. Vague.

Other than this one e-mail and this meeting?

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MR. STERN: Correct.

A. There was an ongoing course of discussions. There were, I believe, follow-up telephone calls and e-mails.

Q. And at the October meeting that you described, the meeting attended by Mr. Barr and Mr. Fleck and Mr. Miller and Ms. Fife, what did Mr. Miller and Ms. Fife say at that meeting?

A. Point of clarification. The meeting I'm -- I referred to did not take place in October.

Q. Ah. When did that take place?

A. It took place on November 21, 2008.

Q. When did Milbank withdraw?

A. Quinn was fully in place as counsel on this matter by the first week of December 2008.

Q. Well, thanks for the clarification.

So Luc Despins, the meeting to follow up on Luc Despins' October 13 e-mail, takes place on November 21; is that right?

A. Correct.

Q. Okay. And your best recollection or your best understanding is that it was attended by Mr. Barr, Mr. Fleck, Mr. Miller and Ms. Fife?

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A. Correct.

Q. And do you know if Houlihan was present, or you just don't know?

A. The best of my recollection is that they were not.

Q. Okay. Were there any discussions on these issues between Milbank on the one hand and Weil on the other hand at any time between Mr. Despins' October 13 e-mail and that November 21 meeting?

MR. COHEN: Well, there's -- Exhibit 504 has an October 15 e-mail as well.

A. Obviously, there was -- the e-mail in question concerns a back and forth between October 13 and October 15, but beyond that, yes, there were additional discussions between Milbank and Weil between October 15 and November 21.

Q. And what were those discussions?

A. The discussions took place between -- discussions took place between Mr. Barr and Ms. Fife. There were e-mail exchanges and phone calls.

Q. And what did they discuss in their

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e-mails and phone calls?

A. Further elaboration on the issues that had been raised by Mr. Despins and further efforts to schedule the in-person meeting suggested by Mr. Despins.

Q. And in the further elaboration on the issues that had been raised by Mr. Despins, what did Mr. Barr tell Ms. Fife?

A. Well, obviously based on Ms. Fife's response on Exhibit 504, specifically, the response on October 13, 2008 at 11:50 P.M., she was not initially receptive to our concerns, and what ensued was a process to convince Weil that these concerns appear to have some basis and that they needed to be investigated further.

Q. And what did Mr. Barr say concerning the basis for the concerns?

A. In the course of telephone calls and -- primarily telephone calls, reiteration of the basic facts here.

Q. Did he describe to Ms. Fife the analysis that Houlihan had done?

A. Again, lawyers don't necessarily do a good job of summarizing what financial advisors

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do to other lawyers. Houlihan had concerns, had issues, and we communicated that fact to Weil.

Q. Mr. Barr I assume had access to whatever analysis Houlihan had done?

A. That assumes that there was a written work product. I don't know if there was.

Q. And what was Ms. Fife's response in these subsequent discussions?

A. The initial character of her response is disclosed in the e-mail to which I referred. She did not think it was a productive use of the Committee or the Debtors' time to investigate these issues further.

Q. Did, at the time in October, did Milbank consider contacting Barclays' counsel about these issues?

MR. COHEN: Objection. I'll instruct the witness not to answer on the basis of work product.

Q. Well, at the time did Milbank do anything to contact Barclays' counsel about these issues?

A. No.

Q. At any point while Milbank was still

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responsible for these matters, did anybody from Milbank contact anybody acting on behalf of Barclays to discuss these issues?

A. Yes.

Q. And when was that?

A. I believe there were discussions between Mr. Despins and Ms. Grandfield.

Q. And when did those discussions take place?

A. Sometime in October.

Q. And what was the substance of those discussions?

A. That we had concerns and unanswered questions about the transaction.

Q. And did Mr. Despins identify for Ms. Grandfield what those concerns and unanswered questions were?

A. I don't know the level of detail presented to Ms. Grandfield in these discussions, no.

Q. Did any of those concerns or unanswered questions relate to a negotiated \$5 billion reduction as referenced in the Alvarez presentation?

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MR. COHEN: Object to the form.

A. As previously testified, the \$5 billion number and the mismatch was the overall theme of our concern, so it's likely that that number came up in those conversations.

Q. And that overall theme of your concern is what was expressed by Mr. Barr to Ms. Fife in his discussions with her and at the November 21, 2008, to the best of your knowledge?

A. Yes, as I previously testified, that is -- that is the central thesis of our concern and would have been communicated in some fashion.

Q. Can you pinpoint for me in time when the \$5 billion mismatch, the overall theme of your concerns, was identified by Houlihan or Milbank?

MR. COHEN: Objection.

MR. TECCE: Object to the form of the question and to the extent that it seeks attorney-client communication or attorney work product.

A. Based on --

Q. I'm just asking for a date.

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A. Again, based on other than privileged communications, no, I cannot.

Q. When is the first point in time that Milbank or Houlihan communicated to Weil this concern about a \$5 billion mismatch?

MR. COHEN: Precisely \$5 billion?

A. On September 22 or at the end -- Sunday and Monday, the 21st and 22nd, and back in that period, Houlihan communicated to Weil that they could not get comfortable with the numbers as presented in the draft schedule and had, even at that stage, concerns about a mismatch.

Q. Okay. So this overall theme of the \$5 billion mismatch was addressed between Milbank and Houlihan on the one hand and Weil on the other hand before the closing; is that correct?

MR. TECCE: Objection to the form of the question.

A. Whether it was \$5 billion or another number I cannot tell you. It was a mismatch. It was in the billions. Approximately \$5 billion is as close as I can get.

Q. After the November 21 meeting between

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Mr. Barr and Mr. Fleck and Ms. Fife and Mr. Miller, did Milbank have any further involvement in the discussion of these issues?

A. During the period between November 21 and the first week of December, Milbank remained involved and may have had further conversations with Weil on these issues.

Q. Do you recall what those conversations were?

A. I don't have any specific recollections of conversations during that period.

Q. At any point did Milbank or Houlihan provide anything in writing to Weil on these issues?

A. Other than Mr. Despins' e-mail of October 13, I'm not aware of anything else in writing.

Q. Now, his e-mail of October 13 also makes reference to a discrepancy on the liability side. What was that?

A. That's the liability number disclosed to the Court.

Strike that. As I sit here, I

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can't -- I can't describe with any precision what the liability issue was at that point in time.

Q. Okay. And when he says "Houlihan's review would indicate that the securities transferred could be worth billions more than 47.4 billion," how many billions more than 47.4?

A. And the question is?

Q. Well, he -- Mr. Despins refers to Houlihan's review and he says it "would indicate that the securities transferred could be worth billions more than the 47.4 billion," and my question is did Houlihan or Milbank ever communicate to Weil how many billions of dollars more than the 47.4 billion?

A. Well, that was the question. I mean, they -- they knew -- their review to date suggested that there was a mismatch in the billions, but they needed access to additional information, which they needed to obtain through the Debtors to refine that further.

Q. And what was the additional information that Houlihan needed from the Debtors?

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A. Again, that was information that Houlihan needed. I can't be very specific as to what they needed to satisfy their own methodologies, but I assume it relates to marks that were available internally at Lehman.

Q. Do you know if that information was ever provided by Lehman to Houlihan?

A. Can you repeat the question?

Q. Do you know if that information was ever provided by Lehman to Houlihan?

A. There were discussions between Houlihan and Lehman.

Strike that. No, I don't.

Q. The analysis that Mr. Despins refers to, is that an analysis with respect to Schedule A, only, or was it analysis with respect to both Schedule A and Schedule B?

A. I think the Committee had concerns about both schedules, but I believe the reference here is to Schedule A.

Q. Was there ever any follow-up discussion between Houlihan and Milbank on the one hand and Weil or Lehman on the other hand concerning Schedule B?

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A. Not that I have specific knowledge of.

Q. And am I correct that at no time between the closing and the first week of December, when Quinn Emanuel took over this matter, did Milbank or Houlihan make an effort to get pricing information from Barclays; is that right?

A. Not directly, in large part because at that point in time the dynamic between Barclays and the Debtors was not optimal. There were ongoing disputes about access to information generally which the Debtors were embroiled in, and part of the reasons for obtaining information at this point was difficult was the fact that Barclays had control over access to most of the information we needed.

Q. So you mentioned Mr. Despins' conversation with Ms. Grandfield. I believe that was in October, am I right about that?

A. Correct.

Q. And did he ask Ms. Grandfield to arrange for Barclays to provide certain information?

A. Not to my knowledge.

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Q. Did anybody from Milbank or Houlihan or the Debtors in this period up to the first week of December ask Barclays to provide information on these issues?

A. Can you repeat the question?
(Record read.)

A. As to Milbank, no. As to Houlihan and the Debtors, I cannot speak.

Q. You don't know?

A. I don't know.

Q. Did Milbank consider it important to get this information from Barclays?

MR. COHEN: Objection. I'll instruct the witness not to answer on the basis of attorney-client privilege and work product.

Q. If Milbank had considered it important to obtain this information at the time, that is, before the first week of December 2008, what options did Milbank have available to it in order to obtain that information from Barclays?

MR. COHEN: Objection. This calls for speculation, it's beyond the scope of the 30(b)(6) subpoena, and the witness is not authorized to testify on behalf of the firm
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as to the subject of that question.

Q. Well, you say that Milbank had questions concerning the value of certain purchased assets. I think that's clearly within the scope of the subpoena.

Now, did Milbank ever send a letter to anybody at Barclays or representing Barclays requesting further information on that subject before December 1 when Milbank withdrew?

A. No.

Q. Okay. And Milbank never sought the Court's assistance in seeking that information, am I right about that?

A. Correct.

Q. As of the time that Milbank withdrew and Quinn Emanuel took over, was there a timeline in place for obtaining this information and resolving these questions?

MR. COHEN: Objection. I'll instruct the witness not to answer. Calls for privileged information and disclosure protected by the Attorney Work Product Doctrine.

Q. Did Milbank ever express to Weil --

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did Houlihan or Milbank ever express to Weil a desire to resolve these issues within a specified period of time?

A. Yes.

Q. And what did -- what was expressed to Weil?

A. As soon as possible.

Q. And what was the reaction?

A. It was an iterative process with Weil. As previously -- as I previously testified, they were not initially receptive obtaining their cooperation and then obtaining what we needed from them took time, took longer than we would have wanted.

Q. You say it was an iterative process, but did you have in mind some sense of time pressure, some date by which you wanted to try to have these issues resolved?

MR. COHEN: I'll instruct the witness not to answer. It's legal advice, privileged, and attorney work product.

Q. While it was an iterative -- withdrawn.

While it was an iterative process with

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Weil, is it fair to say that, at least as early as October 2008, Houlihan and/or Milbank had brought to Weil's attention their concern about this overall theme of a \$5 billion mismatch?

A. Yes.

MR. STERN: I have no further questions.

EXAMINATION BY

MR. COHEN:

Q. Mr. O'Donnell, I have just a couple of questions.

After lunch, you fielded a number of questions that went to the value of certain items, including assets and liabilities in connection with the sale to Barclays. Do you recall those questions?

A. Yes.

Q. And you testified that the value of certain assets and liabilities was uncertain. Do you recall that testimony?

A. Yes.

Q. Would it be more accurate for you to say that those values were uncertain to Milbank and Houlihan?

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1 D. O'DONNELL
2 A. Yes.
3 Q. Did you mean to imply by your answers
4 that the values of those assets and liabilities
5 were uncertain to anyone other than Milbank
6 and/or Houlihan?
7 A. No, I did not.
8 MR. COHEN: I have no further
9 questions.
10 MR. STERN: Okay. Thank you.
11 THE WITNESS: Thank you.
12 THE VIDEOGRAPHER: That concludes the
13 video record for today. The time is now
14 2:57 P.M. We are now off the record.
15 oOo
16
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25

DENNIS C. O'DONNELL

Subscribed and sworn to
before me this day
of 2010.

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1 D. O'DONNELL
2 CERTIFICATE
3 STATE OF NEW YORK)
4 : ss
5 COUNTY OF NEW YORK)
6 I, Kathy S. Klepfer, a Registered
7 Merit Reporter and Notary Public within and
8 for the State of New York, do hereby
9 certify:
10 That DENNIS C. O'DONNELL, the witness
11 whose deposition is herein before set forth,
12 was duly sworn by me and that such
13 deposition is a true record of the testimony
14 given by such witness.
15 I further certify that I am not
16 related to any of the parties to this action
17 by blood or marriage and that I am in no way
18 interested in the outcome of this matter.
19 I further certify that neither the
20 deponent nor a party requested a review of
21 the transcript pursuant to Federal Rule of
22 Civil Procedure 30(e) before the deposition
23 was completed.
24 In witness whereof, I have hereunto
25 set my hand this 6th day of December, 2010.

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1 D. O'DONNELL
2 NAME OF CASE: In re Lehman Brothers, Inc.
3 DATE OF DEPOSITION: January 6, 2010
4 NAME OF WITNESS: Dennis C. O'Donnell
5 Reason Codes:
6 1. To clarify the record.
7 2. To conform to the facts.
8 3. To correct transcription errors.
9 Page _____ Line _____ Reason _____
10 From _____ to _____
11 Page _____ Line _____ Reason _____
12 From _____ to _____
13 Page _____ Line _____ Reason _____
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15 Page _____ Line _____ Reason _____
16 From _____ to _____
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25

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HIGHLY CONFIDENTIAL - D. PETRIE
UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

In Re:

Chapter 11

LEHMAN BROTHERS Case No. 08-13555(JMP)
HOLDINGS, INC., et al., (Jointly Administered)

Debtors.

-----x

* * *HIGHLY CONFIDENTIAL* * *

DEPOSITION OF DAVID PETRIE

New York, New York

August 26, 2009

Reported by:

KATHY S. KLEPFER, RMR, RPR, CRR, CLR

JOB NO. 24293

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1 HIGHLY CONFIDENTIAL - D. PETRIE

2 MR. O'BRIEN: On the phone is Tom
3 O'Brien from Quinn Emanuel representing the
4 Creditors Committee.

5 BY MR. TAMBE:

6 Q. Mr. Petrie, have you ever given a
7 deposition before?

8 A. No, I have not.

9 Q. Okay. Basic rules: I'm going to ask
10 you a series of questions about the
11 Lehman/Barclays transaction and what role, if
12 any, you may have played in that transaction.

13 If you have any trouble understanding
14 my question, let me know. I'll rephrase it.
15 You have to give your answers vocally, no nods
16 of the head, et cetera. She's writing down
17 everything you say, so yeses, nos. I'm happy to
18 clarify any question.

19 By whom are you currently employed?

20 A. Barclays Capital.

21 Q. And how long have you been with
22 BarCap?

23 A. Been with Barclays Capital since
24 January 1998.

25 Q. Before that by whom were you employed?

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1 HIGHLY CONFIDENTIAL - D. PETRIE

2 A. I was employed by AIG Trading Group,
3 Fischer, Frances, Trees & Watts, and Progressive
4 Insurance Company.

5 Q. At Barclays Capital, if you could just
6 describe, starting in '98 to the present,
7 broadly what your positions have been, what your
8 duties have been?

9 A. Sure. I began working at Barclays
10 Capital in a junior role in the repo desk. That
11 role over several years grew into a repo trading
12 position as well as a risk management position
13 for the repo desk.

14 From the repo desk, as you said,
15 broadly, the end of 2005, 2006, I joined the
16 Barclays Bank, PLC Portfolio Group, and my
17 responsibilities were to run the dollar
18 portfolio; and in the beginning of 2008, I
19 returned to the repo desk to run the repo desk
20 for Barclays Capital in the U.S.

21 Q. So, starting in January 2008, what was
22 your title or position at Barclays Capital?

23 A. Specifically in January, I was still
24 working for the Barclays Bank portfolio. I did
25 not take my responsibilities as the head of the

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1 HIGHLY CONFIDENTIAL - D. PETRIE

2 desk until roughly April.

3 Q. And in April when you took your
4 responsibilities for the repo desk at Barclays
5 Capital, what was your position or title?

6 A. My title was director.

7 Q. And was that the title you held
8 throughout 2008?

9 A. Yes.

10 Q. Focusing on that position, starting in
11 April 2008 as a director --

12 And you were the head of the repo desk
13 for Barclays Capital in the U.S.; is that right?

14 A. That's correct, for certain products.

15 Q. Okay.

16 A. Those products included Treasuries,
17 agencies, and mortgages.

18 MR. SHAW: Do you mind if I ask a
19 question to make the record clear?

20 MR. TAMBE: Sure. Go ahead.

21 MR. SHAW: Are you currently the head
22 of the Barclays repo desk?

23 THE WITNESS: No, I am not.

24 Q. What's your current position?

25 A. I currently run the short-term

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2 interest rate desk for Barclays Capital.

3 Q. And how long have you had that
4 position?

5 A. Since approximately October of last
6 year.

7 Q. So it's fair to say shortly after the
8 Lehman/Barclays transaction you took on this new
9 position running the short-term interest rate
10 desk?

11 A. Yes.

12 Q. And maybe we can cut through some of
13 the questions. Starting last October, October
14 2008, did you continue to have any involvement
15 in the Lehman/Barclays transaction, the
16 aftermath of that transaction?

17 A. Yes.

18 Q. If you could just briefly describe,
19 after October 2008 what has been the nature of
20 your involvement in the Lehman/Barclays
21 transaction?

22 A. Assisting in the integration of the
23 two companies, specifically to the desk.

24 Q. When you say "specifically to the
25 desk," what desk are you referring to in the

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1 HIGHLY CONFIDENTIAL - D. PETRIE
2 post October 2008 time period?

3 A. The repo desk.

4 Q. And is that something that you're
5 still involved in in helping with the
6 integration of the two companies?

7 A. No.

8 Q. Was there a period of time when you
9 were involved in that and then that process
10 ceased when you were no longer involved in that
11 integration process?

12 A. Yes.

13 Q. Describe that time period for me.
14 From when to when?

15 A. I would say by approximately
16 November/December that process ended.

17 Q. Are you aware of a settlement
18 agreement that was entered into in or about
19 December 2008 concerning the Lehman/Barclays
20 transaction?

21 A. What settlement agreement are you
22 speaking of?

23 Q. Are you aware of any kind of
24 settlement agreement between Barclays, JPMorgan,
25 Lehman Brothers, Inc., the trustee for Lehman

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2 Brothers, Inc., in or about December 2008 having
3 to do with the transfer of collateral from
4 Lehman through JPMorgan to Barclays?

5 A. As you describe it, no.

6 Q. Okay. We'll come back to that. I'm
7 just trying to get a sense of where you fit into
8 the various pieces of the Lehman/Barclays
9 transaction as a whole.

10 So let's go back to the front end. So
11 let's go back to April 2008. You are on the
12 repo desk at Barclays Capital, correct?

13 A. That is correct.

14 Q. Just describe that desk for me in
15 terms of who you report to, who reports to you.
16 I'm just trying to get a sense of who the
17 individuals are who are involved with that desk.

18 A. Sure.

19 MR. SHAW: As of April 2008?

20 Q. As of April 2008.

21 A. I ran the U.S. dollar repo desk. I
22 reported to Mark Dearlove, and --

23 Do you want me to go further as to who
24 Mark reported to?

25 Q. Sure.

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1 HIGHLY CONFIDENTIAL - D. PETRIE
2 A. Mark Dearlove at the time reported to
3 Alastair Hodge, if I remember correctly.

4 Q. And just in terms of titles or
5 positions, what was Mr. Dearlove's position?

6 A. Managing director.

7 Q. At Barclays Capital?

8 A. Yes.

9 Q. And he was based here in New York?

10 A. No.

11 Q. He was based overseas?

12 A. Mark Dearlove was based in London.

13 Q. How about Mr. Alastair Hodges, what
14 was his position or title?

15 A. Alastair Hodge at the time was a
16 managing director in charge of Prime Services, I
17 believe.

18 Q. And where was he based?

19 A. London.

20 Q. Other than being managing director,
21 did Mr. Dearlove and Mr. Hodge have any other
22 functionary titles, chief operating officer,
23 chief financial officer, things like that, those
24 types of titles?

25 A. No.

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1 HIGHLY CONFIDENTIAL - D. PETRIE
2 Q. And was there any particular
3 department or group or unit that Mr. Dearlove
4 and Mr. Hodge were in?

5 A. Prime Services.

6 Q. And were you a member of that group as
7 well, the Prime Services Group?

8 A. During that period, yes.

9 Q. Yeah, I'm talking about the April 2008
10 period. Is that still the case in September of
11 2008, that you're in the Prime Services Unit?

12 A. Yes.

13 Q. And are you still reporting in
14 September 2008 to Mr. Dearlove?

15 A. Yes.

16 Q. During this time period, April 2008
17 through September 2008, who is reporting to you?

18 A. That would be my team at the time.

19 May I ask again for you to clarify,
20 clarify the dates again?

21 Q. Yes. This is April 2008 through
22 September 2008, so the months leading up to the
23 transaction.

24 A. Multiple repo traders.

25 Q. How many?

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2 as part of Barclays Capital's business? What
3 did this desk do?
4 A. Between April and September?
5 Q. Yes.
6 A. The number one function of a repo desk
7 is to finance the firm's inventory. Also, a
8 repo desk would engage in borrowing and lending
9 of securities with counterparties.
10 Q. Anything else?
11 A. Those are the main functions of a repo
12 desk.
13 Q. And when you referred to engaging in
14 borrowing and lending of securities with
15 counterparties, is that also sometimes referred
16 to as the matched book?
17 A. Yes.
18 Q. What's your recollection of your
19 earliest involvement in what eventually became
20 the Lehman/Barclays transaction?
21 A. My earliest involvement would have
22 been the Saturday, which I believe is September
23 12th, before the announcement of bankruptcy.
24 Q. Okay. That's Saturday, September 13.
25 A. Okay, September 13.
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2 Q. And what is it that you remember about
3 your earliest involvement?
4 A. My memory is I received a phone call
5 from my manager to please go into the office,
6 Barclays Capital, and once you get there, to
7 give him a call.
8 Q. And who was your manager?
9 A. As noted before, Mark Dearlove.
10 Q. Let's take it chronologically from
11 that Saturday. What I would like to do is spend
12 a little bit of time just placing you wherever
13 you were and whatever role you were playing in
14 the course of the next ten days or so, September
15 13 through the 22nd, 23rd of September.
16 So you get the call on the 13th. You
17 go into the office. Describe for me what you
18 were doing on the 13th.
19 A. On the 13th?
20 Q. In connection with the transaction.
21 A. Yeah, on the 13th, I believe I arrived
22 at the office later in the afternoon and was
23 tasked with determining what value, if any,
24 there was to the Lehman Brothers repo desk.
25 Q. Now, when you were called into the
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2 office, are you told what this was about?
3 A. No. I was given a task and I did my
4 best to perform that task.
5 Q. Let me ask it a different way. You
6 were called into the office on a Saturday. Are
7 you told this is about a possible transaction
8 with Lehman?
9 A. I don't remember specifically being
10 told that this was a possible transaction with
11 Lehman.
12 Q. You show up in the office on Saturday
13 and you were asked to determine if there is any
14 value in the Lehman Brothers repo desk, correct?
15 A. Correct.
16 Q. Did you ask why you were being asked
17 to do that?
18 A. I don't remember.
19 Q. Prior to Saturday, had you heard any
20 discussions in the office about Barclays
21 possibly buying Lehman?
22 A. There was speculation across Wall
23 Street as to potential bidders for Lehman, so it
24 was reasonable for me to come to the conclusion
25 that perhaps that was what was going on in
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2 regards to my task on that Saturday.
3 Q. Did you ask anyone on Saturday what's
4 going on, why am I being asked to do this?
5 MR. SHAW: Asked and answered.
6 Q. He's going to object from time to
7 time. I'm going to ask you to answer the
8 question.
9 A. I do not remember asking anyone why I
10 was being asked to do this task.
11 Q. All right. You're asked to do the
12 task and you start doing it, correct?
13 A. Yes.
14 Q. Are you given some spreadsheets or
15 information about the repo desk at Lehman?
16 A. Yes.
17 Q. What are you given?
18 A. I'm given matched book positions; a
19 broad overview of collateral that's held by
20 Lehman at the time.
21 Q. Who gives you these documents or this
22 information?
23 A. I don't recall exactly who gave me
24 those documents.
25 Q. As you describe them, what I'm
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2 picturing is you got some spreadsheets or some
3 reports of some kind handed to you?

4 A. Yes.

5 Q. And in valuing those spreadsheets or
6 documents, were you working alone or were you
7 working with someone else?

8 A. I had called in some team members, my
9 team members.

10 Q. And who had you called in?

11 A. I recall Bill Lent, Nate Hartley, and
12 perhaps Oscar Huettner.

13 Q. And you and your team begin valuing
14 this portfolio on the Saturday, correct?

15 A. That is correct.

16 Q. Let's advance the story now. I'll
17 come back to your valuing and how you went about
18 valuing the portfolio. What else did you do on
19 Saturday?

20 A. That was my sole task.

21 Q. Did that task continue into Sunday?

22 A. I'm not sure exactly what time that
23 task ended.

24 Q. Do you recall it being running late
25 into the night?

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2 information I was provided with was
3 approximately zero and, to your question, there
4 was a suggestion that it was greater than zero.

5 Q. And who was making the suggestion that
6 it was greater than zero?

7 A. Representatives from Lehman Brothers.

8 Q. And do you have a recollection of how
9 much greater than zero was being suggested as
10 the value for that desk?

11 A. I believe they suggested it was
12 between 5 and 10 million dollars.

13 Q. 5 and 10 billion or million?

14 A. Million.

15 Q. Do you recall any of the
16 representatives of Lehman who were making the
17 suggestion?

18 A. No.

19 Q. Did you have conversations with people
20 from Lehman on that Saturday?

21 A. Yes.

22 Q. You were in a conference call with
23 some people?

24 A. I was not on a conference call with
25 people.

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2 A. Yes.

3 Q. What was the conclusion of that task?

4 A. My conclusion of the task of valuing
5 Lehman's repo book was that it had zero value
6 and that it didn't present -- didn't present
7 value to the firm.

8 Q. The documents or spreadsheets that you
9 had been provided, did those have valuations on
10 them?

11 A. I don't recall.

12 Q. Do you recall part of your exercise
13 that Saturday into late Saturday night
14 consisting of disagreeing with the values that
15 had been placed on the repo desk or the repo
16 assets with Lehman Brothers by others?

17 A. Can you repeat the question?

18 (Record read.)

19 A. Yes.

20 Q. And what was the source of those other
21 values that you were disagreeing with?

22 A. A repo desk can measure -- let's say a
23 typical repo desk can measure value for term
24 trades on what's called a net present value, and
25 the net present value that I determined from the

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2 Q. These were face-to-face meetings with
3 Lehman people?

4 A. They were phone calls.

5 Q. Phone calls. And do you remember any
6 of the people with whom you had those -- any of
7 the Lehman people with whom you had those phone
8 calls on that Saturday?

9 A. Yes.

10 Q. Who?

11 A. Mike Webb, David Lohuis. I believe
12 that's it.

13 Q. Did you ever speak with Paolo Tonucci
14 that Saturday?

15 A. Yes, I believe so.

16 Q. Did you speak with Ian Lowitt that
17 Saturday?

18 A. No.

19 Q. You know who those two people are,
20 correct?

21 A. Yes.

22 Q. And you did deal with them at some
23 point in connection with the transaction,
24 correct?

25 A. Yes. Well, let's clarify. Your

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<p style="text-align: right;">Page 30</p> <p>1 HIGHLY CONFIDENTIAL - D. PETRIE</p> <p>2 A. No.</p> <p>3 (Exhibit 265, a document bearing Bates</p> <p>4 Nos. BCI-EX-(S)-37172 through 173, marked</p> <p>5 for identification, as of this date.)</p> <p>6 Q. I have placed before you a two-page</p> <p>7 document marked Exhibit 265. It's an e-mail</p> <p>8 exchange. Take a moment to look at it. Let me</p> <p>9 know when you're done looking at it.</p> <p>10 (Document review.)</p> <p>11 A. I've finished reading it.</p> <p>12 Q. Starting from the first e-mail on the</p> <p>13 first page, actually on the first page of</p> <p>14 Exhibit 265, the very top of the page, there's</p> <p>15 an e-mail from you to Mr. Bommensath. Do you</p> <p>16 see that?</p> <p>17 A. I do see it.</p> <p>18 Q. Okay. And you state in that e-mail,</p> <p>19 "I'm going to get everything I want it sounds</p> <p>20 like." Do you see that?</p> <p>21 A. I can read it, yes.</p> <p>22 Q. And is it consistent with your</p> <p>23 recollection that the information that you had</p> <p>24 requested had been provided to you or was going</p> <p>25 to be provided to you by Lehman?</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 31</p> <p>1 HIGHLY CONFIDENTIAL - D. PETRIE</p> <p>2 A. Yes.</p> <p>3 Q. And you state later on in your e-mail</p> <p>4 you spoke to Paolo and indirectly Ian, do you</p> <p>5 see that?</p> <p>6 A. Yes, I see it.</p> <p>7 Q. Do you have any understanding what you</p> <p>8 meant by you had spoken indirectly with Ian?</p> <p>9 A. No.</p> <p>10 Q. The Saturday into Sunday, the 13th and</p> <p>11 14th of September, did you have any</p> <p>12 understanding of what the nature of the</p> <p>13 contemplated transaction between Lehman and</p> <p>14 Barclays was?</p> <p>15 A. No.</p> <p>16 Q. Did you have any understanding that a</p> <p>17 transaction was not going to happen that</p> <p>18 weekend?</p> <p>19 A. At what time?</p> <p>20 Q. At any point in Saturday/Sunday.</p> <p>21 A. Very late Sunday, it appeared to me</p> <p>22 that there would not be a transaction.</p> <p>23 Q. And how did you get that</p> <p>24 understanding?</p> <p>25 A. I believe I came to that conclusion</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 32</p> <p>1 HIGHLY CONFIDENTIAL - D. PETRIE</p> <p>2 independently when I was told to go home.</p> <p>3 Q. Did you ask anyone about the status of</p> <p>4 the transaction?</p> <p>5 A. I may have, but I don't remember who.</p> <p>6 I certainly didn't get an answer.</p> <p>7 (Exhibit 266, a document bearing Bates</p> <p>8 Nos. BCI-EX-(S)-37192 through 194, marked</p> <p>9 for identification, as of this date.)</p> <p>10 Q. Sir, I have placed before you a</p> <p>11 three-page document marked Exhibit 266. The</p> <p>12 last page is entirely blank. Take a moment to</p> <p>13 look at that exhibit. Let me know when you're</p> <p>14 done.</p> <p>15 (Document review.)</p> <p>16 A. Okay.</p> <p>17 Q. Do you recognize this Exhibit 266 as</p> <p>18 an e-mail that you sent to Mr. Dearlove and</p> <p>19 others on or about Sunday, the 14th of</p> <p>20 September, 2008?</p> <p>21 A. I don't remember this specific e-mail.</p> <p>22 Q. No reason to believe you didn't</p> <p>23 prepare this e-mail, correct?</p> <p>24 A. That's correct.</p> <p>25 Q. We talked earlier about your having</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 33</p> <p>1 HIGHLY CONFIDENTIAL - D. PETRIE</p> <p>2 summarized your conclusions in an e-mail or some</p> <p>3 kind of report. Do you remember that</p> <p>4 discussion?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Is this e-mail Exhibit 262 a</p> <p>7 summary of your conclusions about the valuation</p> <p>8 exercise that you did on Saturday and Sunday,</p> <p>9 September 13th and 14th, 2008?</p> <p>10 A. My page here says 266.</p> <p>11 Q. Yes, Exhibit 266.</p> <p>12 MR. SHAW: You misspoke. You said</p> <p>13 262.</p> <p>14 Q. Okay. 266.</p> <p>15 A. Yes.</p> <p>16 Q. The dollar values that appear in this</p> <p>17 e-mail, are these the dollar values that you</p> <p>18 ascribed to the relevant positions?</p> <p>19 A. Yes.</p> <p>20 Q. Turn to page 2 of this exhibit 266.</p> <p>21 At the top of the page, there's a paragraph that</p> <p>22 begins, "Their risking and NPV methodology is</p> <p>23 sound and similar to what we do," do you see</p> <p>24 that?</p> <p>25 A. I see it.</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

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2 Q. What did you mean by the phrase
3 "risking and NPV methodology"?

4 A. "NPV" stands for net present value,
5 and when a repo desk has engaged in term trades,
6 there is an assigned rate to those term trades
7 at the point of the initiation of said trade.
8 As you move away from day one of that execution
9 of the trade, prevailing rates will change over
10 time, and as they change, one calculates net
11 present value at those prevailing rates.

12 Q. From your statement in this paragraph
13 that we were just reading, "Their risking and
14 NPV methodology is sound and similar to what we
15 do," were you indicating that you approved of
16 the way they risked -- they did their risking
17 and NPV methodology?

18 MR. SHAW: Objection to form. Vague
19 as to what you're -- the scope of his
20 approval of any methodology.

21 A. Can you repeat the question?

22 Q. Sure.

23 MR. TAMBE: Can you read it back,
24 please?

25 (Record read.)

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2 A. No.

3 Q. What did you mean by your statement,
4 then?

5 A. In general, repo desks should employ a
6 way to risk their books. It appeared over the
7 very short amount of time that I've had the
8 opportunity to look at their repo balances that
9 they employed, at the very least, NPV
10 valuations.

11 Q. And was the methodology used by Lehman
12 similar to the one used by Barclays?

13 A. The way -- the very fact that they had
14 an NPV by nature of calculating an NPV would, by
15 nature, be similar to Barclays.

16 Q. And what did you mean by your phrase
17 "the methodology is sound"? What did you mean
18 by that?

19 A. The math in calculating the net
20 present value of a term trade did not seem
21 flawed at the time I was looking at their books.

22 Q. You say beyond that paragraph, "The
23 specials book is reflected at zero." You see
24 that?

25 A. I see it.

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2 Q. What did you mean by that?

3 A. They had wound down their specials
4 book to have very little exposure.

5 Q. At the bottom of page 2 of Exhibit
6 266, the paragraph with the word "Summary" above
7 it, do you see that paragraph?

8 A. I see it.

9 Q. You have a sentence in the middle of
10 that paragraph that reads, "The repo desk's
11 methodology on trading and with whom appears
12 robust in its risk controls and management," do
13 you see that?

14 A. Yes.

15 Q. Okay. And what did you mean by
16 "appears robust in its risk controls and
17 management"?

18 A. It appeared to me during the short
19 period of me looking at those -- their books
20 that they understood the risks that they were
21 writing in repo.

22 (Exhibit 267, a document bearing Bates
23 Nos. BCI-EX-(S)-37195 through 197, marked
24 for identification, as of this date.)

25 Q. Sir, I have placed before you a

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2 three-page document marked Exhibit 267. Take a
3 moment to review this exhibit. Let me know when
4 you're done.

5 (Document review.)

6 A. Okay.

7 Q. Do you recognize Exhibit 267 as a
8 further piece of the analysis that was done by
9 you and your team that weekend of September 13
10 and 14 of 2008?

11 A. I don't remember this specific e-mail.

12 Q. Having reviewed it now, do you
13 recognize it as part of that analysis?

14 A. Yes.

15 Q. This e-mail was prepared by
16 Mr. Hartley, correct?

17 A. Yes.

18 Q. Do you recall having a discussion with
19 Mr. Hartley about his conclusions and his
20 conclusions and his calculations in this e-mail?

21 A. No.

22 Q. One of the addressees on the e-mail is
23 Brian Rozen, R-O-Z-E-N. Who is Mr. Rozen?

24 A. Brian Rozen at the time was equal in
25 my, you could say in my title. His

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2 responsibilities were he was based in London and
3 was responsible for the financing of corporate
4 bond positions. His team was responsible for
5 the corporate bond positions.

6 Q. On the weekend of the 13th and 14th,
7 were you engaged in an exercise to identify
8 assets that Barclays would not wish to purchase
9 from Lehman if there were -- if there was a
10 transaction?

11 A. No.

12 Q. At any time during that ten-day
13 period, starting on the 13th through the 23rd,
14 were you involved in such an exercise?

15 A. No.

16 Q. We'll come to an e-mail, an e-mail
17 which makes reference to a spreadsheet of
18 excluded assets. Does that have any meaning to
19 you?

20 A. Yes.

21 Q. Okay. What is your understanding of
22 the phrase "excluded assets" in this context?

23 A. In the context of the timeframe, which
24 I believe you said from the 10th to the --

25 Q. From the 13th to the 23rd.

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2 A. -- 13th to the 23rd, as we move into a
3 few days into that week, my sole responsibility
4 was to facilitate removing the Fed's funding of
5 Lehman Brothers and replace it with Barclays
6 funding Lehman Brothers. To accomplish that
7 would mean simply we would just take the assets
8 that the Fed was funding.

9 Q. And the phrase "excluded assets," what
10 meaning does that phrase have in the context of
11 your answer?

12 MR. SHAW: Had you finished your
13 answer?

14 A. No, I wasn't finished.

15 Q. Go ahead and finish.

16 A. To accomplish the task of only
17 receiving the collateral that the Fed had been
18 financing for Lehman would, by nature, include
19 assets that weren't being financed by the Fed,
20 which would be excluded assets.

21 Q. You completely lost me with the last
22 part of your answer, so let me try again.

23 Later on in the week, you're involved
24 in the process of replacing the Fed financing
25 with the Barclays financing, is that fair to

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2 say?

3 A. Yes.

4 Q. There are assets that are securing the
5 Fed financing, correct?

6 A. Yes.

7 Q. Are those same assets then used to
8 secure the Barclays financing?

9 A. The intent was for Barclays to finance
10 the assets that the Fed had been financing on
11 Thursday of that week.

12 Q. And in connection with Barclays
13 financing the assets that the Fed had been
14 financing, what role, if any, did excluded
15 assets play in that financing?

16 A. Since Lehman Brothers was financing
17 assets outside of the Fed facility, and my only
18 purpose that week was to remove the Fed from
19 financing of the assets from that Thursday would
20 imply that there were -- not just imply, there
21 were other assets that would be excluded from
22 the Fed replacement trade, as I would call it.

23 Q. So your understanding is the excluded
24 assets were those assets that in fact were not
25 securing the Fed financing?

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2 A. Yes.

3 (Exhibit 268, a document bearing Bates
4 Nos. BCI-EX-(S)-37199 through 200, marked
5 for identification, as of this date.)

6 (Discussion off the record.)

7 (Recess; Time Noted: 10:35 A.M.)

8 (Time Noted: 10:47 A.M.)

9 BY MR. TAMBE:

10 Q. I think before we took the break, sir,
11 we placed in front of you a document Exhibit
12 268. Have you looked at that?

13 A. No, I have not.

14 Q. Why don't you take a look at that and
15 let me know when you're done.

16 (Document review.)

17 A. Okay. I've read it.

18 Q. On the first page of Exhibit 268,
19 that's an e-mail from Mr. Rozen to you
20 forwarding a set of e-mails. Do you see that?

21 A. Yes.

22 Q. And is it fair to say that this
23 collection of e-mails on pages 1 and 2 of
24 Exhibit 268 have to do with Barclays' existing
25 exposure to Lehman on the 14th, the Sunday, 14th

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<p style="text-align: right;">Page 46</p> <p>1 HIGHLY CONFIDENTIAL - D. PETRIE</p> <p>2 marked for identification, as of this date.)</p> <p>3 Q. Sir, I have placed before you a</p> <p>4 three-page document marked Exhibit 270. Take a</p> <p>5 look at it and let me know when you're done.</p> <p>6 A. May I ask, is this document different</p> <p>7 than the previous document?</p> <p>8 Q. I think the attachment on both exhibit</p> <p>9 269 and 270, at least to my eye, looks to be</p> <p>10 similar, but you can confirm that for yourself.</p> <p>11 Why don't we hold 270 aside. I just</p> <p>12 want to make sure we've got the right attachment</p> <p>13 to it, because these are native files that were</p> <p>14 attached to that cover e-mail. So put 270</p> <p>15 aside. We'll come back to it.</p> <p>16 (Exhibit 271, a document bearing Bates</p> <p>17 Nos. BCI-EX-(S)-37270, marked for</p> <p>18 identification, as of this date.)</p> <p>19 Q. I have placed before you a one-page</p> <p>20 document marked Exhibit 271. Take a moment to</p> <p>21 review it and let me know when you're done.</p> <p>22 (Document review.)</p> <p>23 A. I've read it.</p> <p>24 Q. And you recognize this as an e-mail</p> <p>25 that you sent to your team and others at</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 47</p> <p>1 HIGHLY CONFIDENTIAL - D. PETRIE</p> <p>2 Barclays, correct?</p> <p>3 A. I don't remember this e-mail in</p> <p>4 particular.</p> <p>5 Q. Okay. No reason to believe you didn't</p> <p>6 send this e-mail, right?</p> <p>7 A. Correct.</p> <p>8 Q. And just briefly, is it fair to say</p> <p>9 that this e-mail is a set of instructions that</p> <p>10 you gave your team on dealing with Lehman the</p> <p>11 day of the Lehman bankruptcy filing?</p> <p>12 A. You've actually asked a two-part</p> <p>13 question.</p> <p>14 Q. I have?</p> <p>15 A. Well, in my head you have.</p> <p>16 So, first, I recognize this as a plan</p> <p>17 of action for trading on Monday morning. No, I</p> <p>18 don't believe it was at all related to me</p> <p>19 thinking that there was going to be a pending</p> <p>20 bankruptcy filing. It was me being cautious, as</p> <p>21 I would be on any other volatile day, in regards</p> <p>22 to how we would approach the market in trading.</p> <p>23 Q. Prior to September 15th, 2008, had</p> <p>24 there been other days on which you had</p> <p>25 instructed your team not to face Lehman?</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 48</p> <p>1 HIGHLY CONFIDENTIAL - D. PETRIE</p> <p>2 A. Yes, I believe so.</p> <p>3 Q. How many other days were there where</p> <p>4 you had instructed your traders, your team not</p> <p>5 to face Lehman?</p> <p>6 A. I don't know exactly.</p> <p>7 Q. Dozens of days?</p> <p>8 A. Perhaps.</p> <p>9 Q. In item number 7 of your e-mail you</p> <p>10 state, "We need to monitor throughout the day</p> <p>11 our settlements with Lehman and alert me to any</p> <p>12 pending fails that may be related to Lehman."</p> <p>13 What did you mean by that?</p> <p>14 A. Given the volatility in the</p> <p>15 marketplace around the name Lehman, I was being</p> <p>16 an encouraging prudence in regards to our</p> <p>17 settlements with Lehman.</p> <p>18 Q. Is it fair to say that your</p> <p>19 instruction in item number 1, "Do not face</p> <p>20 Lehman," was an instruction not to put on new</p> <p>21 trades with Lehman?</p> <p>22 A. Yes.</p> <p>23 (Exhibit 272, a document bearing Bates</p> <p>24 Nos. BCI-EX-115847 through 5876, marked for</p> <p>25 identification, as of this date.)</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 49</p> <p>1 HIGHLY CONFIDENTIAL - D. PETRIE</p> <p>2 Q. Mr. Petrie, I have placed before you a</p> <p>3 multi-page document marked Exhibit 272, and</p> <p>4 before I ask you to sort of go through the</p> <p>5 entire document, because it's a collection of</p> <p>6 handwritten notes and other documents, I'm just</p> <p>7 going to ask you some general questions about</p> <p>8 different parts of this exhibit, okay?</p> <p>9 A. Would you like me to answer those</p> <p>10 questions before reviewing the document?</p> <p>11 Q. Yes. And then as we get to different</p> <p>12 stages, I'll let you review parts of the</p> <p>13 document.</p> <p>14 First of all, there's some handwriting</p> <p>15 on the first several pages of this exhibit, do</p> <p>16 you see that?</p> <p>17 A. Yes, there is.</p> <p>18 Q. Is that your handwriting?</p> <p>19 A. Without going through it in detail, it</p> <p>20 appears mostly to be my handwriting.</p> <p>21 Q. And is it your understanding in the</p> <p>22 last couple of days you produced for copying and</p> <p>23 production a set of your handwritten notes</p> <p>24 related to the Lehman/Barclays transaction?</p> <p>25 A. Yes.</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

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2 Q. Okay. And it appears from these
3 photocopies that these are pages of a notebook
4 or a calendar, do you see that? Do you see the
5 spiral binding down the side?

6 A. Yes.

7 Q. Do you in fact have a notebook that
8 has these notes in it?

9 A. Yes.

10 Q. Okay. And was it your practice in or
11 about September 2008 to have daily notes of the
12 tasks that you were working on?

13 A. Yes.

14 Q. We're going to circle back to some of
15 the specific pages, but I want to turn your
16 attention in this exhibit all the way down to
17 page 115873. And pages 873, 874 and 875 are
18 what appear to be a printout of a spreadsheet
19 with some handwritten notations on them. Do you
20 see that?

21 A. Yes.

22 Q. And do you recognize that as your
23 handwriting that appears on those pages?

24 A. In part.

25 MR. SHAW: Just so we're clear, it

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2 appears there's a duplicate page. The
3 handwriting's different, but 873 and 874
4 appear to be the same page.

5 Q. So we'll circle back and talk a little
6 bit more about that. 876, the very last page of
7 this exhibit, do you recognize that page?

8 A. Yes.

9 Q. Is that your handwriting?

10 A. No.

11 Q. What do you recognize that page as?

12 A. I recognize this page as a relatively
13 broad attempt at a timeline.

14 Q. And you said it was not your
15 handwriting, correct?

16 A. That is correct.

17 Q. Do you know whose handwriting it is?

18 A. Yes.

19 Q. Whose?

20 A. Gerard LaRocca.

21 Q. Do you know if this document, this
22 last page, page 876, was something that you
23 found in your files or your notes?

24 A. Yes.

25 Q. Okay. Tell me about it. How did

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2 Mr. LaRocca's handwritten rough outline show up
3 in your notes?

4 A. Gerard LaRocca and I at different
5 times throughout that week had spoken, and I
6 don't remember the exact timing of when this was
7 written.

8 Q. And it's your understanding that this
9 page, page 876, the last page of this exhibit,
10 was a document prepared by Mr. LaRocca in or
11 about that week that we've been talking about,
12 the week of September 15th through 22nd of 2008?

13 A. Yes.

14 Q. If I just understand what's being
15 described here, there are basically two types of
16 financing being described here, correct?

17 MR. SHAW: Objection. Foundation.

18 A. It appears, yes, to have two types of
19 financing being discussed.

20 Q. And it describes day-by-day in the
21 columns the status of each of those types of
22 financing, correct?

23 MR. SHAW: Objection. Foundation.

24 A. I don't believe "status" is perhaps
25 the right word.

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2 Q. What's the word you'd use?

3 A. Tuesday, we meet with the Fed and
4 we're asked -- Barclays is being asked to take
5 the Fed out of the Lehman financing. It says a
6 "status" on the bottom, meaning where -- what
7 we're being requested to do by the Fed, being
8 told what to do by the Fed.

9 Wednesday, Barclays prepares to
10 execute on that request by the Fed. Thursday,
11 we begin on that execution that was requested by
12 the Fed.

13 Q. And there's dollar amounts associated
14 with the Thursday entries, do you see that?

15 A. Yes, I see several dollar amounts.

16 Q. And the items that you were describing
17 appear on the same line or row as the heading
18 "Fed Facility" in the left-hand side, do you see
19 that?

20 A. Yes.

21 Q. Above that there's another row, which
22 is titled "Barclays Tries to Assist LB by
23 Providing Liquidity Through Collateralized
24 Repo," do you see that?

25 A. I see it.

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2 Q. And then under Monday, Tuesday,
3 Wednesday and Thursday, there are numbers that
4 appear there, do you see that?

5 A. Yes.

6 Q. And do you understand that as being
7 the amount of the tri-party repo that Barclays
8 had on with Lehman during the first four days of
9 that week, the week of September 15th?

10 A. You said four days.

11 Q. Monday, Tuesday, Wednesday, Thursday.

12 A. There's only three days noted here.

13 Q. Okay. There's a Thursday there, is
14 there not?

15 A. Okay, the number being zero.

16 Q. Right.

17 A. Yes, so four days.

18 Q. So you have my question in mind?

19 A. Can you repeat it?

20 Q. Before we talk about the number of
21 days out of question.

22 (Record read.)

23 A. These numbers seem to be accurate as
24 to the tri-party between Barclays and Lehman.

25 Q. And if I understand the information

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2 contained in that row that we've been looking
3 at, that tri-party repo is reduced to zero by
4 Thursday, correct?

5 A. This document says zero, that's
6 correct.

7 Q. And that's your recollection of what
8 happened, right?

9 A. Yes.

10 Q. And on Thursday, it's also the day
11 that Barclays funds the replacement for the Fed
12 repo, correct?

13 A. May I clarify --

14 Q. Sure.

15 A. -- your statement?

16 Thursday is the day that we were
17 executing at the behest of the Fed to remove
18 them from the funding of Lehman Brothers.

19 Q. And you do so by funding a repo that
20 replaces the Fed repo, correct?

21 A. That was the intention, correct.

22 Q. On this last page of Exhibit 272, in
23 the "Fed Facility" row under "Thursday" there
24 are three items that appear, do you see that?

25 A. Yes.

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2 Q. The first item states, "Barclays wires
3 45 billion," correct?

4 A. Yes.

5 Q. That's the financing that Barclays
6 provided to Lehman on that Thursday, September
7 18th, correct?

8 A. Yes.

9 Q. Okay. The next item that appears
10 under the "Thursday" heading is, "Expected to
11 receive 49.6 in securities," do you see that?

12 MR. SHAW: Objection.

13 Mischaracterizes the document. It's

14 "expects," not "expected."

15 Q. Okay. "Expects to receive 49.6 in
16 securities," do you see that?

17 A. Yes.

18 Q. And that's a reference to 49.6
19 billion, correct?

20 A. Yes.

21 Q. The next entry under the "Thursday"
22 column reads, "Actually receives 7B cash secured
23 in tri-party account at JPM. 43.3 in
24 securities," correct?

25 MR. SHAW: Is your question whether

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2 that's what appears on the sheet?

3 MR. TAMBE: Yes.

4 MR. SHAW: Or is that what happened?

5 Q. Is that what appears on the sheet?

6 A. Yes.

7 Q. That's your understanding --

8 A. That appears on the sheet. It states,
9 "7 billion cash secured in tri-party account at
10 JPM," and below that it says, "43.3 in
11 securities."

12 Q. Okay. And the 43.3 is 43.3 billion,
13 correct?

14 A. Billion.

15 Q. Okay. And these are notes prepared by
16 Mr. LaRocca, correct?

17 A. Yes.

18 Q. All right. Let's go back to your --
19 the beginning of this exhibit, Exhibit 272.

20 Let me ask you, do you have the
21 original of this notebook here?

22 MR. SHAW: Here, no.

23 MR. TAMBE: We would like to take a
24 look at the original because of the
25 photocopy of handwritten notes, and I think

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<p style="text-align: right;">Page 58</p> <p>1 HIGHLY CONFIDENTIAL - D. PETRIE</p> <p>2 there's probably features on some of these</p> <p>3 pages that we can't make out because of the</p> <p>4 photocopying. So whenever you get a chance,</p> <p>5 we would like to inspect the original.</p> <p>6 MR. SHAW: We'll look into it. I</p> <p>7 mean --</p> <p>8 MR. TAMBE: Okay. It might make this</p> <p>9 examination easier, so it's unfortunate that</p> <p>10 we don't have the original here.</p> <p>11 Q. We've put together these pages in</p> <p>12 Bates number order. Can you flip through these</p> <p>13 pages and see, is this the order in which these</p> <p>14 pages appear in your notebook.</p> <p>15 (Document review.)</p> <p>16 A. It seems that they're in the order</p> <p>17 they would be in my notebook. I would make a</p> <p>18 couple clarifications.</p> <p>19 Q. Sure. Go ahead.</p> <p>20 A. Some of the dates on the pages are</p> <p>21 incorrect. It seems that the dates are one day</p> <p>22 ahead of perhaps what those dates were actually</p> <p>23 when the notes were taken. That's human error,</p> <p>24 had the wrong date. And it's possible, as I was</p> <p>25 going through a volatile week, that I could be</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 59</p> <p>1 HIGHLY CONFIDENTIAL - D. PETRIE</p> <p>2 jumping from pages forward or backward as I</p> <p>3 would be making notes in a hurry. So they may</p> <p>4 not necessarily be in perfect chronological</p> <p>5 order.</p> <p>6 Q. Okay. If I understand your answer,</p> <p>7 you seem to have confirmed that at least the</p> <p>8 sequence in which these pages appear is the same</p> <p>9 sequence in which they appear in your physical</p> <p>10 notebook?</p> <p>11 A. They appear to be, yes.</p> <p>12 Q. Okay. But it may be that when you</p> <p>13 were keeping those notes, you were jumping</p> <p>14 around pages, given everything that was going on</p> <p>15 that week?</p> <p>16 A. Correct.</p> <p>17 Q. Okay.</p> <p>18 A. And that the dates may be inconsistent</p> <p>19 with the actual date on the top.</p> <p>20 Q. Okay. And your sense that the date</p> <p>21 may be incorrect is based on the content of the</p> <p>22 words versus the date that appears; is that</p> <p>23 right?</p> <p>24 A. Yes.</p> <p>25 Q. And you generally remember -- okay.</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 60</p> <p>1 HIGHLY CONFIDENTIAL - D. PETRIE</p> <p>2 Let's go through some of the these pages and we</p> <p>3 can see if that's an issue that we need to drill</p> <p>4 down on more.</p> <p>5 Let's start with the first page.</p> <p>6 What's your best understanding of the notations</p> <p>7 that appear on that first page? What's being</p> <p>8 described there?</p> <p>9 A. It appears to be me thinking out loud</p> <p>10 about financing of positions.</p> <p>11 Q. There's no date, as far as I can tell,</p> <p>12 that appears on that first page. Do you see</p> <p>13 that?</p> <p>14 A. Yes.</p> <p>15 Q. The next page of the exhibit has a</p> <p>16 date of 9/17/08 at the top. See that?</p> <p>17 A. Yes.</p> <p>18 Q. Does that at all help you in terms of</p> <p>19 dating that first page, when it is that you were</p> <p>20 making these notes?</p> <p>21 A. It doesn't.</p> <p>22 Q. You've got -- there's one date that</p> <p>23 appears in a comment at the bottom of the page.</p> <p>24 I'm going to need your help understanding. This</p> <p>25 is on page 1 of the exhibit, the page that ends</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 61</p> <p>1 HIGHLY CONFIDENTIAL - D. PETRIE</p> <p>2 in 847.</p> <p>3 At the bottom of the page you've got a</p> <p>4 "9/16." Do you see that?</p> <p>5 A. I see that.</p> <p>6 Q. If you can help us just understand</p> <p>7 that comment that's appearing at the bottom</p> <p>8 there. What is that comment? It's a</p> <p>9 handwriting question.</p> <p>10 A. It appears to say, "10 and a half</p> <p>11 billion versus equity, September 16."</p> <p>12 Q. And then below that?</p> <p>13 A. "Intraday cash needed to facilitate</p> <p>14 settlements."</p> <p>15 Q. Does that help you date this page at</p> <p>16 all?</p> <p>17 A. May I ask what day of the week</p> <p>18 September 16th was?</p> <p>19 Q. It's a Tuesday, I believe. The 15th</p> <p>20 was a Monday.</p> <p>21 A. Given that I made improper dates on</p> <p>22 pages after these, I can't be certain if I meant</p> <p>23 Monday or Tuesday.</p> <p>24 Q. At the top of this first page, there</p> <p>25 appear to be items for treasuries, agencies and</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

<p style="text-align: right;">Page 62</p> <p>1 HIGHLY CONFIDENTIAL - D. PETRIE</p> <p>2 mortgages, do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. And the numbers that appear after each</p> <p>5 of those, what are those numbers?</p> <p>6 A. Do you want me to give my best guess?</p> <p>7 Q. Your best guess, yes.</p> <p>8 MR. SHAW: Objection. Calls for</p> <p>9 speculation.</p> <p>10 A. Those numbers, 25 cents, 2.75 and</p> <p>11 2.90, were probably reflective of current market</p> <p>12 rates for repo transactions.</p> <p>13 Q. And are those references to haircuts</p> <p>14 for those types of assets; is that what you're</p> <p>15 referring to?</p> <p>16 A. No.</p> <p>17 Q. Okay. When you say they're current</p> <p>18 market rates, how are those market rates being</p> <p>19 expressed?</p> <p>20 A. A repo transaction has two parties,</p> <p>21 normally, one party that's lending collateral</p> <p>22 and another party that's lending cash. The</p> <p>23 party lending cash will receive an interest rate</p> <p>24 on that cash for the term of that loan. These</p> <p>25 appear to be rates that would be attached to</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 63</p> <p>1 HIGHLY CONFIDENTIAL - D. PETRIE</p> <p>2 those types of loans.</p> <p>3 Q. Further down on that first page 847,</p> <p>4 there's a reference that appears to be the</p> <p>5 number 100 followed by some words. You see</p> <p>6 that?</p> <p>7 A. Yes.</p> <p>8 Q. Can you decipher that for me, please?</p> <p>9 A. "100 billion to Barclays" is what it</p> <p>10 appears to be.</p> <p>11 Q. And do you have an understanding as to</p> <p>12 what that entry means, "100 billion to</p> <p>13 Barclays"?</p> <p>14 A. No.</p> <p>15 Q. At any time during that week, the week</p> <p>16 of the 15th through the 22nd of September, did</p> <p>17 you ever discuss with anyone the overall</p> <p>18 economics of the transaction between Lehman and</p> <p>19 Barclays?</p> <p>20 A. No.</p> <p>21 MR. SHAW: Objection.</p> <p>22 Q. Do you know whether the transaction,</p> <p>23 the acquisition of these assets by Barclays from</p> <p>24 Lehman, resulted in a gain to Barclays?</p> <p>25 A. No.</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 64</p> <p>1 HIGHLY CONFIDENTIAL - D. PETRIE</p> <p>2 Q. Did anyone tell you about a discount</p> <p>3 in the sale of assets from Lehman to Barclays?</p> <p>4 A. No.</p> <p>5 Q. Were you ever part of any</p> <p>6 conversations or discussions about marking down</p> <p>7 the Lehman assets that were being purchased by</p> <p>8 Barclays?</p> <p>9 A. No.</p> <p>10 Q. Have you ever reviewed to this day the</p> <p>11 Asset Purchase Agreement between Lehman and</p> <p>12 Barclays?</p> <p>13 A. No.</p> <p>14 Q. Ever seen it?</p> <p>15 A. I've seen parts of it on the Internet.</p> <p>16 Q. When did you see parts of it on the</p> <p>17 Internet?</p> <p>18 A. Approximately a month, couple months</p> <p>19 ago maybe.</p> <p>20 Q. And for what purpose were you on the</p> <p>21 Internet looking at parts of the APA?</p> <p>22 A. Curiosity.</p> <p>23 Q. Was it in connection with your</p> <p>24 potential deposition in this case?</p> <p>25 A. No.</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 65</p> <p>1 HIGHLY CONFIDENTIAL - D. PETRIE</p> <p>2 Q. Other than looking at parts of the</p> <p>3 APA -- let me withdraw that. What were you</p> <p>4 curious about?</p> <p>5 A. I was curious about the enormity of</p> <p>6 the times, so it wasn't just me looking at the</p> <p>7 Lehman Brothers information. It would also be</p> <p>8 looking at overall economically where we had</p> <p>9 come from September 2000 -- September 2008 to</p> <p>10 where we are now.</p> <p>11 Q. Were there other documents that you</p> <p>12 were looking up on the Internet when you</p> <p>13 happened across the APA?</p> <p>14 A. No.</p> <p>15 Q. Let me ask you the other way. Did you</p> <p>16 go looking for the APA to see what the deal was?</p> <p>17 A. No.</p> <p>18 Q. And what is it that you remember about</p> <p>19 the parts of the APA that you saw during your</p> <p>20 Internet search?</p> <p>21 A. Simply that it was available on the</p> <p>22 Internet.</p> <p>23 Q. Okay. Have you talked to anyone about</p> <p>24 any of the terms of the APA?</p> <p>25 A. No.</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

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2 Q. Are you aware of something called the
3 Clarification Letter?

4 A. No.

5 Q. Does that phrase have any meaning to
6 you?

7 A. No.

8 Q. Let's go back to this exhibit, Exhibit
9 272. The second page of the exhibit ends in
10 848. Do you see that?

11 A. Yes.

12 Q. If I'm reading this correctly, you
13 have a question that's sort of diagonally
14 written on this page, "When is Chapter 7
15 happening?" Is that what you have written
16 there?

17 A. Yes.

18 Q. And you had an understanding that the
19 Chapter 7 was the Chapter 7 filing by LBI, the
20 broker-dealer, correct?

21 A. Can you ask the question again?
22 (Record read.)

23 A. No.

24 Q. Above that sentence we were just
25 discussing you have a star and then it reads,

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2 "We need to own assets." Did I read that
3 correctly?

4 A. Yes.

5 Q. And what was that a reference to?

6 A. I don't remember.

7 Q. Then you have two points at the middle
8 of the page numbered 1 and 2, do you see that?

9 A. Yes.

10 Q. Can you just help decipher those for
11 me?

12 A. 1 reads "Fed legal." 2, "Trading with
13 Lehman legal/PNL."

14 Q. And what did you mean by those
15 entries?

16 A. I don't remember.

17 Q. Was it your concern during that week
18 that you felt like the Fed was pressuring
19 Barclays to provide financing to Lehman?

20 A. No.

21 Q. I believe earlier when you described
22 that week, you said you -- Barclays was told by
23 the Fed to provide replacement financing. Do
24 you remember saying that?

25 A. Yes.

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1 HIGHLY CONFIDENTIAL - D. PETRIE

2 Q. What did you mean by that?

3 A. The Fed asked/told -- the Fed
4 requested that Barclays replace them, being the
5 Fed, in the funding for the assets that the Fed
6 had been currently funding for Lehman as of
7 Thursday of that week.

8 Q. Was it your sense that Barclays had
9 the option of saying no to the Fed?

10 MR. SHAW: Objection. Foundation.

11 A. I don't know.

12 Q. Was it your sense, based on what you
13 were doing at the company, that Barclays felt it
14 was under pressure to agree with the Fed's
15 request?

16 A. I don't know.

17 Q. Anyone ever say that to you?

18 A. No.

19 Q. Was your comment on page 2, Exhibit
20 272, did you have concerns about whether what
21 the Fed was doing was legal?

22 MR. SHAW: Objection. Asked and
23 answered.

24 A. I never had that.

25 Q. And your second point, "Trading with

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2 Lehman legal," were you concerned about the
3 legality of trading with Lehman?

4 MR. SHAW: Objection. Asked and
5 answered.

6 A. What is your question?

7 Q. That statement there, "Trading with
8 Lehman legal/PNL," did you have a concern when
9 you wrote that note about the legality of
10 trading with Lehman?

11 MR. SHAW: Objection. Asked and
12 answered.

13 A. No.

14 Q. What's the reference to PNL? What
15 does that mean?

16 A. I don't know.

17 Q. No idea what that means?

18 A. No.

19 Q. Does that abbreviation have any
20 meaning in your business?

21 A. No.

22 Q. I mean, P/L is profit/loss, correct?

23 A. PNL is profit and loss.

24 Q. PN. So these three letters, "PNL,"
25 ordinarily stand for profit and loss?

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2 A. Yes.

3 Q. The page numbered 850 at the bottom,
4 can you just read those notes to yourself. Let
5 me know when you're done.

6 (Document review.)

7 A. Okay.

8 Q. Just help me understand this. Do you
9 recognize this as a set of notes related to --
10 that were made on or about the same time?

11 A. If you mean the same time as during
12 that week, the answer is yes.

13 Q. No, and the items that appear on this
14 page, are these all thoughts related to one set
15 of events?

16 A. I would say, looking at my
17 handwriting, until the last two points, it
18 appears to be one sitting, and to the bottom two
19 points, I appear to be -- have a little bit of
20 better handwriting, so maybe it's two separate
21 events. I'm not certain.

22 Q. So just putting aside the bottom two
23 points, the rest of the text or the handwriting
24 that appears on this page, what is that, what
25 event or events is that handwriting capturing?

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2 Q. Is it your sense that this captures a
3 conference call, a discussion that you had with
4 these individuals?

5 A. No.

6 Q. Right in the middle of page you've got
7 a statement that reads, "Legal opinion on repo."
8 Do you see that?

9 A. Yes.

10 Q. Do you recall discussing with anyone
11 at Lehman obtaining a legal opinion on the repo?

12 A. No.

13 Q. Do you recall having a discussion with
14 anyone about the subject of obtaining a legal
15 opinion on the repo?

16 THE WITNESS: Does that infringe upon
17 my --

18 MR. SHAW: I will ask you not to
19 divulge the content of any discussions you
20 may have had with counsel for Barclays at
21 any point, but if you can answer the
22 question without divulging communications
23 you had with counsel for Barclays, go ahead.

24 THE WITNESS: Is that the content of
25 (inaudible) --

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2 A. It appears to be capturing a broad
3 overview of the Fed -- of what the Fed had been
4 funding, touches on the type of collateral that
5 the Fed had been funding for Lehman Brothers,
6 and notes the -- at least two programs that the
7 Fed had been using to provide liquidity to
8 Lehman.

9 However, I should note that those two
10 acronyms, the TSLF and OMO, were not unique to
11 just Lehman, meaning those programs were used
12 street-wide. I'm sorry. Three, including the
13 PDCF.

14 Q. There's a series of names that appear
15 at the top of the page. The first name I
16 recognize, at least the handwriting, is Scott
17 Leckner, do you see that?

18 A. I do see that.

19 Q. And who was Mr. Leckner?

20 A. I don't know.

21 Q. Do you recognize any of the other
22 names? I just can't read the handwriting.

23 A. Below that appears to be John Feraca,
24 and then two below that, I see Paolo and then
25 Ian. And I don't recognize the other name.

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2 MR. SHAW: Why don't we step outside
3 in the hall for a little bit.

4 (The witness and Mr. Shaw leave the
5 room to confer.)

6 (Time Noted: 11:45 A.M.)

7 (Time Noted: 11:48 A.M.)

8 (Record read.)

9 MR. SHAW: I will instruct you not to
10 reveal any communications you had with
11 Barclays, but if you had a discussion with
12 anyone other than counsel for Barclays about
13 that, you may answer.

14 A. I did not have any discussions outside
15 of Barclays in regards to legal matters.

16 Q. Any idea what you meant by this entry
17 on your diary, "Legal Opinion on Repo"?

18 A. Making certain that I understood with
19 internal counsel --

20 MR. SHAW: We're not going to get into
21 your discussions with internal counsel.

22 MR. TAMBE: We're not talking about
23 internal discussions with counsel. He's
24 telling me what he was thinking.

25 Q. What were you thinking?

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1 HIGHLY CONFIDENTIAL - D. PETRIE
2 A. I don't know. "Legal Opinion on
3 repo," right, thinking out loud.
4 Q. Right below the "Legal Opinion on
5 Repo" you have an entry that says, I believe,
6 "SIPIIC waiver," do you see that? S-I-P-I-C
7 waiver, do you see that?
8 A. Yes.
9 Q. And there's a name next to that, Ray
10 Dorato?
11 A. Yes.
12 Q. At BONY, correct?
13 A. The page says "BONY" after Ray Dorato.
14 Q. Do you know Mr. Dorato as the general
15 counsel of BONY?
16 A. I don't recognize the name.
17 Q. It states, below "SIPIIC waiver," "Is
18 Asset Purchase Agreement effective after
19 bankruptcy?" Do you see that? Or effect --
20 Did I read that correctly?
21 A. You read it correctly.
22 Q. What's that a reference to?
23 A. I don't know.
24 Q. Did you have a concern that there
25 would be a default on the repo if LBI went into

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1 HIGHLY CONFIDENTIAL - D. PETRIE
2 bankruptcy?
3 A. In any repo transaction, whether it be
4 small or large, my job in running the repo desk
5 would be to continually be concerned about
6 events of default.
7 Q. So your best guess is you in fact were
8 concerned about a potential default on the repo
9 that was being contemplated with Lehman,
10 correct?
11 A. That is correct. However, I would
12 like for the record to show that I was concerned
13 about that for an event of default with any
14 transaction that we did, and in fact, during the
15 year 2008 and the end of 2007, there was
16 heightened concern across Wall Street in regards
17 to events of default. And repo desks across the
18 street were plagued with events of default that
19 did cause considerable losses across Wall
20 Street, and my job was -- part of my job was to
21 be wary of those events.
22 Q. Had you experienced any defaults on
23 your repo desk?
24 A. Yes, the Barclays repo desk
25 experienced defaults, most of them, if not all,

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2 prior to me joining the desk, meaning me running
3 the desk in 2008.
4 Q. I mean, if Barclays had lent money and
5 received collateral to secure that lending,
6 Barclays would be protected, right?
7 A. The question you're asking is actually
8 the answer is no. You do your best, one does
9 their best, in running a repo desk to protect
10 itself in the event of default of their
11 counterparties, and to the extent that there is
12 a default, lessons were learned quite quickly
13 that the depth of markets for certain types of
14 assets were quite shallow and oftentimes
15 resulted in losses.
16 Q. And would you try and protect yourself
17 from a risk of default by asking for a greater
18 haircut on the collateral that was being
19 pledged?
20 A. As Wall Street progressed through
21 2006, 2007, 2008, haircut issues were addressed
22 almost daily across all of Wall Street,
23 including Barclays.
24 Q. And you increased the haircuts to try
25 and give yourself more protection, correct?

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2 A. Sometimes haircuts were increased.
3 Sometimes haircuts were decreased.
4 Q. And if you had concerns about the
5 liquidity of a particular piece of collateral
6 that was being pledged to you, you would ask for
7 a greater haircut, correct?
8 A. If a repo desk endeavors to borrow a
9 particular asset, it will make a determination
10 at the time of borrowing that asset as to what
11 is the correct haircut, period.
12 Q. And just cutting to the chase on the
13 Fed repo that ultimately got replaced by the
14 Barclays financing, Barclays provided, what, \$45
15 billion of financing to Lehman; is that right?
16 A. In connection with the Barclays taking
17 the Fed out of the funding of Lehman, and at the
18 request of the Fed, we provided funding for \$45
19 billion for the Fed collateral for Thursday.
20 Q. And that Fed collateral had a value
21 greater than \$45 billion, correct?
22 A. Yes.
23 Q. A value of approximately \$50 billion,
24 correct?
25 A. I would put it below that, but yes,

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2 Q. That was the haircut, correct?

3 A. The haircut would reflect the
4 difference between the cash that's loaned and
5 the value of the collateral at the time of the
6 trade being executed.

7 Q. And was it your understanding that if
8 there had been a default on the repo, that
9 Barclays would simply keep the collateral?

10 A. In the event of a default, if an event
11 of default has occurred, it is normal practice
12 for the collateral that had been collateralizing
13 the loan to then revert to the lender of cash.

14 Q. Just so I understand what you mean by
15 that, if Barclays is the lender and Barclays
16 has, say, 50 billion of collateral, and Lehman
17 defaults, Barclays gets to keep the collateral;
18 is that what you're saying?

19 A. Yes.

20 Q. Were you concerned at all that if
21 Lehman's default was the result of a bankruptcy,
22 Barclays may not be able to keep all of the
23 collateral?

24 A. No.

25 Q. Do you remember discussing that with

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2 anyone during that week?

3 MR. SHAW: Again, I'll --

4 Q. Other than lawyers?

5 A. No.

6 Q. Next page, 851, towards the bottom
7 third of the page you have a line that begins
8 "excluded asset," do you see that?

9 A. Yes.

10 Q. And the calculation that appears
11 there, do you see that?

12 A. Yes.

13 Q. Can you, one, decipher that language
14 and, two, explain what you mean by that?

15 A. May I take a moment to read the whole
16 page, please?

17 Q. Sure. Absolutely. Let me know when
18 you're done.

19 A. Okay. Your question again, please?

20 (Record read.)

21 A. Excluded asset says 71 billion; 10
22 something funded, meaning I can't read that,
23 that word; 61 billion balance, and I don't know
24 what that math is pertaining to.

25 Q. Flip down a couple more pages to page

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2 853. There are details of notes on page 853,
3 854 over onto 855. I'm not sure if they all go
4 together, but if you could look at those three
5 pages and just read those notes to yourself.
6 Let me know when you're done and I'll ask you
7 some questions.

8 (Document review.)

9 A. I've looked them over.

10 Q. One, do these three pages, should they
11 be read together as a set of notes about a
12 particular meeting or event?

13 A. Yes. The date's incorrect, it
14 appears.

15 Q. And the date that appears on page 853
16 is 9/17/08, which was the Wednesday?

17 A. Right. This meeting occurred on
18 Tuesday.

19 Q. And this meeting that you're referring
20 to is a meeting with the Fed; is that right?

21 A. Yes. It's physically at the Fed.

22 Q. And you attended that meeting?

23 A. Yes.

24 Q. How long did the meeting last?

25 A. Approximately two hours.

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2 Q. And just -- let's step away from the
3 notes for a second. Just describe generally
4 what was discussed in the meeting.

5 A. The Fed had asked Barclays to step
6 into the funding of Lehman and to take the Fed
7 out of the funding of Lehman. That was the sole
8 purpose of the meeting.

9 Q. And if I could just run down your
10 notes in terms of who attended that meeting. I
11 think you have a list of names at the top of
12 page 853. I can't read any of those names.

13 A. Ian, Gerard, Elena.

14 Q. Let me stop there for a second. Ian
15 and Gerard, that would Ian Lowitt and Gerard
16 Reilly from Lehman?

17 A. Gerard LaRocca.

18 Q. Oh, Gerard LaRocca. And Ian?

19 A. Ian Lowitt.

20 Q. Elena, who is Elena?

21 A. Matrullo.

22 Q. From?

23 A. Our Credit Department.

24 Do you want me to continue?

25 Q. Yes, please.

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A. Ian, Alan, Art Citassamo.

Q. Who are those three individuals?

A. Ian Pryor, also from Credit; Alan Kaplan from Barclays Legal; Art Citassamo, a senior representative from Bank of New York.

Q. And then the names that appear down the -- I don't know, I'm not sure if they're columns or descriptions. If you move over from those names, there's another set of entries. What are those?

A. Lucinda.

Q. Lucinda who?

A. Brickler I believe is how you pronounce her last name.

Q. From Barclays?

A. No, Lucinda -- these are now individuals representatives attending the meeting from the Fed.

So Lucinda. Next to her name is "payments." Andrew, I can't decipher his last name, but it says next to it "CCR."

Q. And what does "CCR" stand for?

A. I don't know.

Q. Okay.

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A. Then I read Donna from the Markets Group. And it appears to be Jan Byce, as best I can read my writing, and then Aaron Klein, but next to both of their names I have counsel.

Rick -- I can't pronounce his last name. I can't read his last name.

Q. Okay.

A. Next to his name I have "credit," and then below that is the name Chris Burke, in parentheses, "coming."

Q. And who is Chris Burke?

A. Chris Burke is a senior person that works at the Fed.

Q. You have a series of items below. If you could just decipher those.

A. Number 1, "Explain our undertaking of Fed's" -- I can't read that next word -- "on replacing LBI with BCI to assume 47 billion."

I'm sorry, I do know what that word says.

Q. Okay.

A. Number 1, "Explain our undertaking of Fed's focus on replacing LBI with BCI to assume 47 billion."

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Number 2, "Half collateral DTC eligible/half Fed wire" -- I can't make out that word.

Q. Next item?

A. Number 3, "Intention tomorrow to reverse all collateral."

Q. Let me just ask you about that entry and your statement about the date when this meeting took place. The meeting took place on Tuesday. Was there an intention to reverse all the collateral on the Wednesday?

A. No.

Q. The reversal of the collateral took place on Thursday, right?

A. That's correct.

Q. Okay.

A. Number 4, "Offering of day loan." Number 5, "We take all collateral to PDCF." Number 6, "Over two-week period put to street."

Q. So those last two items, 5, "We take all collateral to PDCF," what did you mean by that?

A. In the undertaking/at the behest of the Fed, Barclays' funding Lehman Brothers for

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the collateral that the Fed was funding on Thursday. Barclays received assurances from the Fed that we would be able to take that collateral and fund it through the PDCF, the Primary Dealer Credit Facility, which is what addresses point number 5.

Q. And just to drill down that further, whether or not that collateral otherwise satisfied PDCF eligibility, Barclays was seeking from the Fed an understanding that all of this collateral would in fact be PDCF-eligible, is that fair?

A. Yes.

Q. Okay. The next point?

A. Number 6, "Over two-week period put to street."

Q. What do you mean by that?

A. That Barclays, upon completion of what I call the Fed trade, would make every effort to self-finance the received collateral without the assistance of the Fed facilities.

Q. Just so I understand how 5 and 6 may relate to each other, for a period of two weeks, for up to a period of two weeks, you could use

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1 HIGHLY CONFIDENTIAL - D. PETRIE
2 the PDCF as a financing facility with this
3 collateral. After that two-week period, you
4 would start getting financing for that
5 collateral from the street or otherwise dispose
6 of that collateral, is that fair?

7 A. No.

8 Q. Okay. How do 5 and 6 work together,
9 if at all?

10 A. To be precise, on day one, upon
11 receiving the collateral, we had assurances from
12 the Fed that, should we need to fund the
13 collateral, we could do so through the PDCF, all
14 the while working towards self-financing.

15 Q. What's the two-week period? Is that a
16 limitation or a requirement that you become
17 self-financing with respect to that collateral
18 in two weeks?

19 A. The discussion at the Fed was a
20 two-way discussion, and I felt comfortable that
21 I told the Fed that within a couple of weeks we
22 could finance this collateral. It was not a
23 directive of the Fed. It was my estimation that
24 I explained to the Fed.

25 Q. Did Barclays in fact finance that

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2 collateral to the street after the transaction,
3 so on and after the 22nd of September?

4 A. Is your question the entire amount of
5 collateral or portions of the collateral?

6 Q. Portions of it.

7 A. On day one of receiving the
8 collateral, we started financing parts of that
9 collateral with the street.

10 Q. Do you know of any efforts to sell the
11 collateral?

12 A. No.

13 Q. Do you know if there have been any
14 sales of the collateral?

15 A. No.

16 Q. If you look at the -- I'm sorry, let's
17 go on, items 7, 8 and 9 that appear on page 853.
18 So let's carry on. If you could carry on
19 deciphering what your words are --

20 A. Oh, just read it?

21 Q. -- and then we can talk about what you
22 meant by some of these entries.

23 A. Sure. Number 7, "Discussing reserve
24 impact of" something -- I can't decipher the
25 word at this point -- "TSLF adding 20 billion

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2 total."

3 Number 8, "Debit cap is 54 billion
4 according to Lucinda." Below that in
5 parentheses, "13 billion," question mark,
6 question mark, "with Gerard." 9, "JPM"
7 something "pledge."

8 Q. Okay. If you can roll over to page
9 856, and looking at 856 and 857 together, if you
10 could first confirm for me whether those two
11 sets of notes all relate to the same event or
12 meeting?

13 A. Yes, they appear to be.

14 Q. And they reference a DTC meeting; is
15 that right?

16 A. That's correct.

17 Q. And when did the DTC meeting take
18 place?

19 A. Upon leaving the Federal Reserve on
20 Tuesday evening, several of us walked directly
21 to the DTC to meet with them.

22 Q. And what was the purpose of that
23 meeting?

24 A. Given that the Fed had requested
25 Barclays to step into the funding of Lehman

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2 Brothers, and it being a sizable trade, assets
3 move over or assets -- assets move over the DTC
4 wire. So we were engaging DTC to let them know
5 what we were planning at the behest of the Fed
6 and to come up with a plan as to how to best
7 accomplish that.

8 Q. How long did that meeting last?

9 A. Approximately one hour.

10 Q. And you identified on page 856 at the
11 top, you've got the I guess the two DTC people
12 you met with, Donald Donahue and Grace Montal?

13 A. Isaac, I believe.

14 Q. Isaac Montal.

15 Next section down, there appear to
16 be -- well, why don't you decipher what the next
17 three lines are. It begins at "250MM" on the
18 left-hand side?

19 A. Would you like me to read them to you?

20 Q. If you could just first read them and
21 then tell me what you mean by those entries.

22 A. It says, "250 million, 10,000
23 employees, licenses, 75 billion in assets. 1.
24 Corporate Headquarters; 2. Data centers and
25 more real estate. 60 billion in assets. 47

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<p style="text-align: right;">Page 90</p> <p>1 HIGHLY CONFIDENTIAL - D. PETRIE</p> <p>2 billion pledges to Fed."</p> <p>3 Q. And what is the import or meaning of</p> <p>4 those items?</p> <p>5 A. When the meeting started, this would</p> <p>6 appear to be a review given by one of the</p> <p>7 Barclays representatives to DTC reflecting what</p> <p>8 had already become released publicly.</p> <p>9 Q. So this is your understanding of --</p> <p>10 these are your notes about a description about</p> <p>11 the transaction that was given by Barclays to</p> <p>12 DTC at that meeting?</p> <p>13 A. Well, it's a reflection of someone at</p> <p>14 Barclays giving a description of, in broad</p> <p>15 terms, of what was released I believe that same</p> <p>16 morning publicly.</p> <p>17 Q. Released about what? About the</p> <p>18 transaction, right?</p> <p>19 A. Well, what transaction? The</p> <p>20 transaction --</p> <p>21 Q. The Lehman/Barclays transaction.</p> <p>22 MR. SHAW: You mean as of that time?</p> <p>23 MR. TAMBE: Yes, as of that time.</p> <p>24 Q. I'm sure they weren't trying to tell</p> <p>25 the future on that day, so ...</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 91</p> <p>1 HIGHLY CONFIDENTIAL - D. PETRIE</p> <p>2 A. Yeah, this would be a, as I noted</p> <p>3 before, a broad description as to what had been</p> <p>4 released that same morning publicly by Barclays.</p> <p>5 Q. About the transaction? I mean,</p> <p>6 released by Barclays about what? About the</p> <p>7 transaction with Lehman, correct?</p> <p>8 A. About the broad transaction with</p> <p>9 Lehman.</p> <p>10 Q. Okay. And the 60 billion in assets</p> <p>11 and 47 pledged to Fed that appears on the</p> <p>12 right-hand side, was it your understanding that</p> <p>13 those were the liabilities that were being</p> <p>14 assumed by Barclays?</p> <p>15 A. I don't know.</p> <p>16 Q. Because you've got two items for</p> <p>17 assets. You've got 75 billion in assets and</p> <p>18 you've got a writing that says 60 billion in</p> <p>19 assets, do you see that?</p> <p>20 A. I see it.</p> <p>21 Q. Do you have any understanding as to</p> <p>22 why you have those two different items for</p> <p>23 assets?</p> <p>24 A. No.</p> <p>25 Q. On the next page, page 857, at the top</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 92</p> <p>1 HIGHLY CONFIDENTIAL - D. PETRIE</p> <p>2 of the page, if you could just decipher what</p> <p>3 those first two lines are that begin "JPM"?</p> <p>4 A. "JPM," dollar sign, "needs cash and</p> <p>5 then release to LBI buckets."</p> <p>6 Q. And was that your understanding, that</p> <p>7 JPM had to be paid to satisfy the Fed repo</p> <p>8 before it would release the collateral to LBI?</p> <p>9 A. I would explain it in this way.</p> <p>10 Q. Okay.</p> <p>11 A. To complete the Fed trade where</p> <p>12 Barclays would receive only the Fed collateral,</p> <p>13 given that JPMorgan was the custodian for Lehman</p> <p>14 Brothers, Barclays would send the cash first to</p> <p>15 JPMorgan on behalf of Lehman and then JPMorgan</p> <p>16 would receive the assets from the Federal</p> <p>17 Reserve that would then come to Barclays, i.e.,</p> <p>18 the Fed transaction.</p> <p>19 Q. Okay. Two lines below where you were</p> <p>20 just reading, it says, "2 percent for 9/30," do</p> <p>21 you see that?</p> <p>22 A. I see it.</p> <p>23 Q. What does that mean?</p> <p>24 A. It's discussing the terms as in rate</p> <p>25 and termination date for the repo trade.</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 93</p> <p>1 HIGHLY CONFIDENTIAL - D. PETRIE</p> <p>2 Q. And the next line below that?</p> <p>3 A. The next line below that reads,</p> <p>4 "Haircut charged will be implied."</p> <p>5 Q. What does that mean?</p> <p>6 A. Given that the Fed had extended</p> <p>7 funding for Lehman assets, the Fed employed its</p> <p>8 own haircut schedule for those assets. Given</p> <p>9 that Barclays had been asked by the Fed and we</p> <p>10 were undertaking taking the Fed out of their</p> <p>11 lending of money to Lehman Brothers for those</p> <p>12 specific assets, when we would receive those</p> <p>13 assets versus the cash that we were lending to</p> <p>14 Lehman, the collateral that we would receive,</p> <p>15 which would be at this point identical to what</p> <p>16 the Fed had been funding on that Thursday, the</p> <p>17 haircuts would be implied because they had</p> <p>18 already been applied to the Lehman loans.</p> <p>19 Q. Were there assets that the Fed was</p> <p>20 funding against that Barclays did not want to</p> <p>21 acquire?</p> <p>22 MR. SHAW: Objection. Foundation.</p> <p>23 A. No.</p> <p>24 Q. All right. Then you got four items at</p> <p>25 the bottom of page -- the middle of page 857</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

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2 numbered 1 through 4. Could you just describe
3 those for me and tell me what you were capturing
4 by those four points?
5 A. Would you like me to just read them
6 first to you?
7 Q. Sure, you can read them first.
8 A. Number 1, "Lehman to 855. Program
9 tonight/test 8 A.M. No later."
10 Q. What does that mean?
11 A. 855 is a, you could call it a
12 depository or an account, sorry, that was opened
13 up at JPMorgan for Barclays, meaning Barclays'
14 account number 855.
15 Q. All right. Next item?
16 A. Number 2, "Money goes whenever people
17 ready," meaning --
18 Q. Okay, next item?
19 A. 3, "Goal 11 A.M. completion."
20 Q. Next line?
21 A. "47 billion versus 54 billion cap," in
22 parentheses, "Spike was 7 billion."
23 Q. What does that mean?
24 A. Every institution on Wall Street has a
25 cap, an intraday cap, as to how much they can be

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2 exposed without being properly collateralized.
3 During the normal course of business,
4 an institution will be expecting collateral in
5 to satisfy the loans that it's made out. So
6 ones custodian has exposure during that period
7 of time in between receiving collateral and
8 sending out money, and the Fed had agreed to
9 increase that intraday cap to facilitate the
10 trade that they had asked us to do.
11 Q. So the 47 billion was what?
12 A. This line in my notes of "47
13 billion//54 billion cap" is referring to the cap
14 being raised so that we could complete the trade
15 with the Fed.
16 Q. 47 was what was Barclays' cap, is that
17 what you're saying?
18 A. I don't know what the cap was at the
19 time when they raised it.
20 Q. And was it your sense that it was
21 raised to 54 billion?
22 A. Yes.
23 Q. And the last item says --
24 A. You should also --
25 Q. Go ahead.

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1 HIGHLY CONFIDENTIAL - D. PETRIE
2 A. -- clarify that, once again, as I just
3 stated, that there's a normal cap in place.
4 During a normal course of business, an
5 institution needs that cap to operate in the
6 most normal of conditions.
7 Q. And what's the reference to the spike
8 in parentheses, "spike was 7 billion"?
9 A. I take it as meaning the raise in the
10 cap that the Fed had agreed to.
11 Q. Okay. All right, let's move to the
12 next set of notes, page 858.
13 MR. SHAW: Is this a good time to take
14 a lunch break?
15 MR. TAMBE: We can take a break now if
16 you want, that's fine. It's as good a time
17 as any.
18 (Luncheon recess; time noted: 12:33
19 P.M.)
20
21
22
23
24
25

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1 HIGHLY CONFIDENTIAL - D. PETRIE
2 AFTERNOON SESSION
3 (Time Noted: 1:12 P.M.)
4 DAVID PETRIE, resumed and
5 testified further as follows:
6 EXAMINATION BY (Cont'd.)
7 MR. TAMBE:
8 Q. Mr. Petrie, if you have before you
9 Exhibit 272, these are the handwritten notes. I
10 just want to pick up where we left off, page
11 858.
12 Again, if you could just help describe
13 what you have down on 858.
14 A. Sure. Let me just read through it
15 here.
16 (Document review.)
17 A. This page -- well, do you want to go
18 line-by-line?
19 Q. Why don't you just give me an overview
20 of what the page is.
21 A. This page appears to be an attempt to
22 get an idea of what the different asset classes
23 are being held at Lehman.
24 Q. And the valuations that appear on this
25 page against those asset classes, where would

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1 HIGHLY CONFIDENTIAL - D. PETRIE
2 those valuations have come from?
3 A. I don't know.
4 Q. Were you using a custodian report as a
5 source of values for the Fed collateral?
6 A. Were we using a custodian report?
7 Q. Yeah.
8 A. In regards to this page, like I said,
9 I don't know where I got these valuations from.
10 Q. If you can move forward to page 861
11 and 8 -- 861 and 862. First question is whether
12 those two pages should be read together or are
13 those two separate events that have been
14 captured there?
15 A. They appear to be separate.
16 Q. Then let's just take page 861, and if
17 you can take a look at the entries you have on
18 861 and then briefly describe for me what's
19 being -- what you have written about there.
20 A. Okay. I have, "Issue raised. DTC,
21 FINRA, Chase's attorneys, what happens with
22 transfer of accounts."
23 Q. That's a reference to customer
24 accounts being transferred?
25 A. I don't recall what specifically that
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2 issue, that entry is for here. I don't know.
3 Q. Are you reading through the rest of
4 the document?
5 A. Yeah, I'm reading through the rest of
6 it.
7 At the bottom of the page -- well, the
8 middle of the page appears to me to be a, where
9 we're talking about James Walker, Teri Scott, TJ
10 Gavenda, Matt Hughey, Scott Wadlow, I believe I
11 received a phone call from them wanting to get
12 insight into the Fed trade where they hadn't
13 been privy to what exactly was going on in
14 regards to the Fed trade previously.
15 Q. And this would have been on the
16 Thursday, the 18th?
17 A. I think -- was Thursday the 18th?
18 Q. Thursday was the 18th.
19 A. Okay. Yeah, that would make sense if
20 it was Thursday, the 18th.
21 Q. And then at the bottom of the page you
22 have three numbered points?
23 A. Yes.
24 Q. If you could go into those, please.
25 A. Number one, "Operation problem at DTC
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1 HIGHLY CONFIDENTIAL - D. PETRIE
2 because of Lehman box being fixed," and then in
3 parentheses, "was delivering right back to
4 Chase."
5 Q. And what does that mean?
6 A. I believe what this references is
7 that, when Barclays initially transferred \$5
8 billion for the Fed repo transaction the
9 Thursday morning, there were significant issues
10 in us, meaning Barclays, getting collateral back
11 in return for that \$5 billion, and point one is
12 an attempt by operations to explain why that
13 occurred, why it was such a slow process. And
14 the explanation in parentheses, "was delivering
15 right back to Chase," means that, to me, that
16 when the collateral was released by the Fed that
17 was meant to come to Barclays, went elsewhere.
18 Q. The next point?
19 A. Number 2, "Confusion around NewCo
20 concerns on" -- "on" something "to make the" --
21 "this account on the fly."
22 Q. Based on --
23 Go ahead.
24 A. They had denoted that, by Operations,
25 that given how quickly they were preparing an
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2 account on behalf of Barclays, that they may
3 have made an error on JPMorgan's side.
4 Q. And then the next item, item number 3?
5 A. Number 3, "JPMorgan not releasing
6 because margin on account," and beneath that I
7 have the name Heidi Miller.
8 Q. And what's that a reference to?
9 A. That is in reference to when the
10 collateral on Thursday was released by the Fed,
11 it was almost immediately recognized that other
12 deliveries were being made rather than the Fed
13 trade, meaning collateral coming to Barclays,
14 and presuming that other obligations were being
15 made rather than completing the Fed trade.
16 Q. Just trying to understand what you're
17 saying here. Are you saying that after Barclays
18 wired the money, instead of getting the
19 collateral that was under the Fed trade, it
20 seemed to be getting collateral from -- that was
21 covering other obligations?
22 A. Initially, we may have been getting
23 Fed collateral, but since that collateral was
24 not coming to Barclays swiftly, it was apparent
25 that collateral from the Fed trade was going
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1 HIGHLY CONFIDENTIAL - D. PETRIE
2 elsewhere.

3 Q. The collateral wasn't moving itself.
4 Someone was making the collateral move
5 elsewhere. Who was that?

6 A. When it comes to operational issues
7 and how it got to where it was going, I don't
8 know.

9 Q. But the collateral would have been
10 with the custodian, with Lehman's custodian,
11 right, JPM?

12 A. When the Fed released the collateral,
13 it would have been released to JPM.

14 Q. Right. Is it your understanding that
15 it was JPM that was directing it to the
16 incorrect place?

17 A. I don't know.

18 Q. Well, if it wasn't JPM, who else could
19 be moving the collateral?

20 A. I think your conclusion that JPM was
21 obviously sending it somewhere other than
22 Barclays is correct. How that process occurs
23 I'm ignorant of.

24 Q. And in your earlier answer were you
25 also suggesting that JPM was switching the

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2 collateral so the collateral it was sending on
3 to Barclays may have been different from the
4 collateral that was being released by the Fed?

5 A. It became very clear during the day
6 during Thursday that since collateral that had
7 been released to JPM had gone elsewhere, that to
8 collateralize the loan that we had extended to
9 Lehman to take the Fed out of the trade, that
10 collateral would have to come from elsewhere.

11 Q. And these notes at the bottom of page
12 861, can you tell us when in the process, in the
13 mechanics of the repo, you made those notes?

14 A. Not with certainty, no.

15 Q. Putting the notes aside, what's your
16 general recollection of how events unfolded with
17 respect to the repo on the Thursday, the 18th?

18 A. Arrived at the Lehman office early
19 morning on Thursday. There were several Lehman
20 representatives physically at the office. There
21 was multiple people that had dialed into that
22 office from both Barclays, JPMorgan and Lehman
23 operations.

24 We at some point in that morning,
25 early morning, had sent over \$5 billion and

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2 expected to receive collateral against that \$5
3 billion. We did not receive collateral in a
4 timely fashion, and that's when it became quite
5 apparent that collateral had gone elsewhere.

6 And for the next several hours, we
7 waited, Barclays waited to determine how we
8 would proceed and also work towards getting a
9 resolution to collateralizing that first \$5
10 billion loan. Subsequently, Barclays later on
11 that day sent an additional \$40 billion in what
12 amounts to one lump sum, but in four different
13 wires, I believe it was four different wires,
14 and at that point, now \$45 billion in total had
15 been sent and we were intent on completing the
16 Fed transaction.

17 Throughout the day, the collateral
18 coming to Barclays was quite slow and tedious.
19 As we reached critical times in the day that
20 have to do with when wires typically go down on
21 a trading day, Barclays and the Fed,
22 effectively, and DTC had extended the hours that
23 were permissible to trade for the street and
24 Operations area did their best to collateralize
25 that loan.

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2 At the end of the day, we'll call the
3 end of the day when the wires were officially
4 shut, Barclays was not fully collateralized and
5 to the tune of approximately \$7 billion. There
6 was some time in between the wires going down
7 and JPMorgan reengaging the group on the phone
8 call to agree to wire on Barclays behalf into
9 our account \$7 billion cash to, in essence,
10 fully collateralize the \$45 billion loan.

11 (Exhibit 273, a document bearing Bates
12 Nos. BCI-EX-(S)-37621, marked for
13 identification, as of this date.)

14 Q. I've handed you a one-page document
15 marked Exhibit 273. Please take a look at that
16 document and let me know when you're done.

17 A. Okay.

18 Q. Do you recognize this as a
19 collection -- as a series of e-mails between
20 yourself and Mr. Dearlove and others?

21 A. I don't remember it specifically.

22 Q. Do you recognize it as such having
23 read it here?

24 A. I recognize that I wrote the e-mails.

25 Q. You are just describing some of the

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1 HIGHLY CONFIDENTIAL - D. PETRIE
2 mechanics of the Barclays repo transaction that
3 was done on the 18th; is that right?
4 A. Yes, some of the mechanics, that's
5 correct.
6 Q. The first e-mail at the top of the
7 page is an e-mail from Mark Dearlove to you with
8 copies to others. Do you see that?
9 A. Yes.
10 Q. Okay. And in the body of the e-mail,
11 Mr. Dearlove states at the end, "Without this,
12 the Lehman transaction would have failed." Do
13 you see that?
14 A. Yes, I see it.
15 Q. Did you understand what he was
16 referring to?
17 A. I, no, I don't particularly. I took
18 it as the repo transaction.
19 Q. So you took that as a reference to the
20 repo transaction, not the overall asset purchase
21 transaction between Lehman and Barclays; is that
22 what you're saying?
23 A. Yes, that's fair.
24 Q. I'm handing you a document that was
25 previously marked as Exhibit 143B. Take a

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2 moment to look at the document. There's a
3 spreadsheet attached to it. Let me know when
4 you're done. I'll ask you some questions.
5 (Document review.)
6 A. Okay. I've read through it.
7 Q. This e-mail chain which begins at the
8 bottom of page 2 of this exhibit is from Stephen
9 King to you. Do you see that?
10 A. Yes, he I see it.
11 Q. And attaches a file which is entitled
12 "Excluded Mortgage Assets, 9/17/2008.xls," do
13 you see that?
14 A. Yes, I see it.
15 Q. If you pull up to the front, that
16 e-mail gets forwarded on to various people, and
17 then if you get to the first -- the second
18 e-mail on the first page, it's from David Aronow
19 to Rick Policke and others, do you see that?
20 A. Yes.
21 Q. And there's a CC to someone at Bank of
22 New York Mellon, do you see that?
23 A. Yes.
24 Q. In the body of the e-mail it states,
25 "Attached to the Cusips associated with the book

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2 that we were told on the call will be excluded
3 from the movements tomorrow. These Cusips
4 should not be part of the pledge to BONY
5 according to our earlier conversation." Do you
6 see that?
7 A. I see that.
8 Q. And this is an e-mail dated September
9 17, 2008, do you see that?
10 A. I see that.
11 Q. The movements tomorrow that were
12 referenced in that e-mail were the Fed repo
13 associated movements, correct?
14 MR. SHAW: Objection. Foundation.
15 A. I wouldn't know.
16 Q. You wouldn't know. Were you aware of
17 any Cusips being excluded from the pledge to
18 Bank of New York under the Barclays repo
19 transaction?
20 A. I was solely aware that we were to
21 take Fed collateral that was Lehman's collateral
22 that was being funded on Thursday, and by nature
23 of only wanting and being asked by the Fed to
24 take that collateral, by nature there would be
25 assets that we wouldn't be taking.

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2 Q. Were you aware of having identified to
3 Lehman what assets should be pledged to the Fed
4 so that those would then be the only assets that
5 would be pledged to you?
6 A. No.
7 Q. What was your understanding of the
8 file that you were receiving from Stephen King,
9 "Excluded Mortgage Assets," what was that a file
10 of?
11 A. I don't know.
12 Q. Well, you received that file from
13 Stephen King. This is still on page 2 of this
14 exhibit. You then forward that to Kevin Caffrey
15 at BONY Mellon, right?
16 A. Yes.
17 Q. Why are you forwarding that to Bank of
18 New York Mellon?
19 A. It's a file that's been identified by
20 someone else of assets that aren't part of the
21 Fed repo is what I took it as.
22 Q. Did you have any discussions with
23 Stephen King about the process by which these
24 assets were identified?
25 A. No.

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2 Q. Do you have an understanding as to how
3 these excluded mortgage assets were identified?

4 A. No.

5 (Exhibit 274, a document bearing Bates
6 Nos. BCI-EX-(S)-38010 through 38013, marked
7 for identification, as of this date.)

8 Q. I've handed you a four-page document
9 marked Exhibit 274. Please take a moment to go
10 through the document and I'll ask you about it,
11 starting with the last e-mail, which is on page
12 2 over to 3 over to 4.

13 (Document review.)

14 A. I've read the last e-mail in the
15 string.

16 Q. It's an e-mail from Teri Scott to
17 Jonathan Stone and several other people. You're
18 CC'd on that e-mail, do you see that?

19 A. Yes.

20 Q. Do you recognize this as a summary of
21 the transactions that were done on the 18th of
22 September?

23 A. I recognize it as Teri Scott's
24 summary, yes.

25 Q. And you read his summary, correct, or
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2 her summary?

3 A. I've just now read it.

4 Q. And is it consistent with your
5 recollection of those transactions?

6 A. It is consistent with my recollection,
7 although parts of it I wasn't privy to previous
8 to receiving this e-mail.

9 Q. What parts of it were you not privy to
10 prior to receiving this e-mail?

11 A. On paragraph 1, in regards to the
12 tri-party and rehypothecation issues.

13 Q. Anything else?

14 A. In bold, the, "A list of Cusips to be
15 excluded has been provided to ensure collateral
16 we are not purchasing is excluded in this
17 matter" is something I'd be ignorant of.

18 Q. And just so I understand your answer,
19 you were not aware until you saw this e-mail
20 that a list of Cusips to be excluded had been
21 provided to ensure the collateral that Barclays
22 was not purchasing was excluded from the
23 transfer, correct?

24 A. Well, as noted before, we only wanted
25 to take the Fed collateral, and the way that she

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2 writes this is worded a bit differently than my
3 understanding, but I can't speak for Teri Scott
4 and how -- what she meant by that statement.

5 Q. Go to the next substantive e-mail in
6 this chain. It's the e-mail that begins at the
7 bottom of page 1 over to page 2 from John Haley
8 to Teri Scott and others. Have you had a chance
9 to look at that e-mail?

10 A. I'll read it right now.

11 Q. Okay.

12 (Document review.)

13 A. Okay.

14 Q. You'll see in John Haley's e-mail, the
15 description that begins on page 1, carries over
16 on to page 2. Do you see that, the various
17 items that are listed there?

18 A. Yes, I do.

19 Q. Is it your understanding that,
20 following the repo on the 18th, on the morning
21 of the 19th, that was in fact the position of
22 the collateral and cash held by Barclays on the
23 Barclays repo?

24 A. I can see that John Haley has produced
25 an e-mail to attempt to break down the types of

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2 collateral that we received.

3 Q. Is that consistent with your
4 recollection of what happened that evening into
5 the Friday?

6 A. My recollection is in dollar terms.
7 We received 42.7-ish billion dollars worth of
8 collateral and got \$7 billion in cash to
9 complete the Fed repo trade. This breakdown
10 from John Haley is something I wouldn't be able
11 to comment on. I don't know if it's correct or
12 not.

13 Q. The very first e-mail at the top of
14 page 1, the short e-mail, I don't know if you've
15 read it. Have you?

16 A. Not yet.

17 Q. Just read it and let me know when
18 you're done.

19 (Document review.)

20 A. I've read it.

21 Q. That's another e-mail from Teri Scott,
22 do you see that?

23 A. Yes.

24 Q. In the middle of her e-mail, she
25 writes, "Ops. had to pull all the collateral

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<p style="text-align: right;">Page 114</p> <p>1 HIGHLY CONFIDENTIAL - D. PETRIE</p> <p>2 allocated to London, and we're therefore over</p> <p>3 our unsecured limit by \$1.9 billion." Do you</p> <p>4 see that?</p> <p>5 A. I see that.</p> <p>6 Q. Do you have an understanding as to</p> <p>7 what that means?</p> <p>8 A. No.</p> <p>9 Q. Do you have any understanding as to</p> <p>10 what the phrase "collateral allocated to London"</p> <p>11 means?</p> <p>12 A. No.</p> <p>13 Q. The next sentence reads, "Part of this</p> <p>14 overage can also be attributed to EFG, as they</p> <p>15 were unsecured by 1 billion." Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. What does EFG mean?</p> <p>18 A. Equity Finance Group.</p> <p>19 Q. And do you have an understanding as to</p> <p>20 what this sentence means?</p> <p>21 A. Yes. During the normal course of</p> <p>22 business, there can be, especially during this</p> <p>23 volatile time period in September, there can be</p> <p>24 large valuations intraday in regards to the</p> <p>25 value of collateral, and I take this sentence as</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 115</p> <p>1 HIGHLY CONFIDENTIAL - D. PETRIE</p> <p>2 to meaning that, due to there being a valuation</p> <p>3 change in collateral normally held by EFG, that</p> <p>4 they needed additional billion-dollar loan from</p> <p>5 PLC, which wouldn't be unusual.</p> <p>6 Q. When we were talking earlier about</p> <p>7 John Haley's e-mail at the bottom of page 1 over</p> <p>8 to page 2, you said that you thought about the</p> <p>9 repo in some dollar terms, and you said \$42</p> <p>10 billion and change in collateral, do you</p> <p>11 remember that?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. That \$42 billion in change in</p> <p>14 collateral value, what is your --</p> <p>15 A. You said 42 billion change?</p> <p>16 Q. \$42 billion and change. It's 42 point</p> <p>17 something, right?</p> <p>18 A. Oh, okay. Yes.</p> <p>19 Q. Where did that value come from, the</p> <p>20 value that you have in your mind?</p> <p>21 A. The value of 42.7, approximately,</p> <p>22 \$42.7 billion would have come from, as assets</p> <p>23 moved from JPMorgan to the Bank of New York</p> <p>24 during the Fed trade, the valuations would come</p> <p>25 from the Bank of New York.</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 116</p> <p>1 HIGHLY CONFIDENTIAL - D. PETRIE</p> <p>2 Q. So when you think of this \$42.7</p> <p>3 billion number, you're thinking of a Bank of New</p> <p>4 York valuation number?</p> <p>5 A. Yes, and also thinking of it in terms</p> <p>6 of, like I just mentioned, that there's a</p> <p>7 volatile -- we were in volatile markets, so the</p> <p>8 approximate value of 42.7 is a snapshot in time</p> <p>9 that could go up or down, you know, minute by</p> <p>10 minute as markets changed.</p> <p>11 Q. I assume when this repo was done on</p> <p>12 the 18th, at some point on the 19th Barclays</p> <p>13 received a report from BONY as to the value of</p> <p>14 the collateral; is that correct?</p> <p>15 MR. SHAW: Objection. Foundation.</p> <p>16 A. You're asking me, once again, am I</p> <p>17 assuming that there was a report?</p> <p>18 Q. No, I'm asking you do you know whether</p> <p>19 there was a report?</p> <p>20 A. There were attempts of reports to be</p> <p>21 sent by Bank of New York to Barclays for</p> <p>22 valuations of securities, but as mentioned,</p> <p>23 those values would be during very volatile</p> <p>24 markets and pricings could have been going up or</p> <p>25 down during minutes and hours post-transaction.</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 117</p> <p>1 HIGHLY CONFIDENTIAL - D. PETRIE</p> <p>2 Q. I handed you a document that was</p> <p>3 previously marked as Exhibit 157A, a two-page</p> <p>4 document. Let me know when you're done</p> <p>5 reviewing it.</p> <p>6 (Document review.)</p> <p>7 A. I've read it.</p> <p>8 Q. You're not shown as a recipient or a</p> <p>9 sender of any of these e-mails. I want to ask</p> <p>10 you about the e-mail on the first page from</p> <p>11 David Aronow to Paolo Tonucci, 19th of</p> <p>12 September, 12:47. Do you see that?</p> <p>13 A. Yes, I see it.</p> <p>14 Q. David Aronow states in that e-mail,</p> <p>15 "Barclays' Operations Team has recalculated the</p> <p>16 value of the collateral that they received from</p> <p>17 us last night and they are more than fully</p> <p>18 collateralized, including the haircuts applied."</p> <p>19 Do you see that?</p> <p>20 A. I read that.</p> <p>21 Q. Did you have any discussions with</p> <p>22 David Aronow about recalculating the value of</p> <p>23 the collateral Barclays received from BONY?</p> <p>24 A. No.</p> <p>25 Q. Had you expressed any views to David</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

<p style="text-align: right;">Page 118</p> <p>1 HIGHLY CONFIDENTIAL - D. PETRIE</p> <p>2 Aronow or to anyone else at Lehman about whether</p> <p>3 you believed that Barclays was fully</p> <p>4 collateralized as of Friday, the 19th of</p> <p>5 September?</p> <p>6 A. No.</p> <p>7 Q. Was that your understanding, that you</p> <p>8 were fully collateralized on the 19th of</p> <p>9 September?</p> <p>10 A. I believed that we were, including the</p> <p>11 \$7 billion.</p> <p>12 Q. And did you have any discussions with</p> <p>13 anyone at Lehman about standing down with the</p> <p>14 transfer of any further movements of collateral</p> <p>15 on that Friday, the 19th of September?</p> <p>16 A. I do not understand what he means by</p> <p>17 "stand down."</p> <p>18 Q. Putting aside the collateral that</p> <p>19 moved over on the 18th in connection with the</p> <p>20 Barclays repo, were you aware of any movements</p> <p>21 of collateral that were taking place on Friday,</p> <p>22 the 19th?</p> <p>23 A. I was aware there were movements of</p> <p>24 collateral, but for what purposes I'm not aware.</p> <p>25 Q. Did anyone say to you on the 19th of</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 119</p> <p>1 HIGHLY CONFIDENTIAL - D. PETRIE</p> <p>2 September or over the weekend of the 20th or</p> <p>3 21st that, other than the Fed repo collateral,</p> <p>4 other collateral had to be identified and moved</p> <p>5 into Barclays by Lehman?</p> <p>6 A. No.</p> <p>7 Q. And did you ever have a view on the</p> <p>8 19th and thereafter that the collateral that</p> <p>9 Barclays received from the Fed repo was not the</p> <p>10 collateral that Barclays intended to purchase</p> <p>11 from Lehman?</p> <p>12 MR. SHAW: Objection. Vague as to</p> <p>13 time.</p> <p>14 You say "intended to purchase from</p> <p>15 Lehman."</p> <p>16 A. Can you repeat the question, please?</p> <p>17 (Record read.)</p> <p>18 A. I wasn't part of that -- party to the</p> <p>19 Asset Purchase Agreement. I was only tasked</p> <p>20 with one purpose, which was to receive the Fed</p> <p>21 collateral to take the Fed out of the repo</p> <p>22 trade, and it was clear that we did not receive</p> <p>23 in its entirety the repo that had been at the</p> <p>24 Fed from Lehman Brothers and given the</p> <p>25 difficulties we have discussed already. So it</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 120</p> <p>1 HIGHLY CONFIDENTIAL - D. PETRIE</p> <p>2 was clear to me that we had received collateral</p> <p>3 to collateralize our loan that would have</p> <p>4 included assets that were not part of the</p> <p>5 original Fed trade on Thursday.</p> <p>6 Q. Are you aware of any effort to try and</p> <p>7 transfer to Barclays that collateral which was</p> <p>8 part of the Fed repo but which wasn't</p> <p>9 transferred to Barclays?</p> <p>10 A. I know I went into the office on</p> <p>11 Friday morning expecting to try to complete the</p> <p>12 Fed repo transfer and that there was collateral</p> <p>13 that had moved, but for what that collateral was</p> <p>14 satisfying, I don't know.</p> <p>15 Q. Let's go back to the notes, 272. Page</p> <p>16 862, which is the next page after the one we had</p> <p>17 last discussed, if you could help us decipher</p> <p>18 what the words that appear on that page. If you</p> <p>19 could just read them out and we can talk about</p> <p>20 what you're writing about.</p> <p>21 A. It says, number 1, "PBN customer</p> <p>22 finance." Below that says, "Racers are RV with</p> <p>23 LCPI," and the name James Walker on the same</p> <p>24 line. Below that says, "Trust structures. LCPI</p> <p>25 repo'd LBI. LBI repo'd to street. PDCF 20</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 121</p> <p>1 HIGHLY CONFIDENTIAL - D. PETRIE</p> <p>2 percent on racers. Loans are still on LCPI.</p> <p>3 Trust is funded by ABCP." Then the name Martin</p> <p>4 Kelly.</p> <p>5 Q. Okay. So let's start unpackaging the</p> <p>6 that. The "PBN customer finance" that appears</p> <p>7 in the first line, "PB" is prime brokerage or</p> <p>8 prime brokering?</p> <p>9 A. That would seem reasonable.</p> <p>10 Q. Okay. And racers, the reference to</p> <p>11 racers, what are racers?</p> <p>12 A. I believe racers are a</p> <p>13 securitized-type product that had been issued</p> <p>14 off of another entity, not LBI, so Lehman</p> <p>15 Brothers entity.</p> <p>16 Q. Is not the LCPI Lehman Commercial</p> <p>17 Paper, Inc.?</p> <p>18 A. To be honest with you, LCPI, you've</p> <p>19 just told me what it is. I wouldn't have been</p> <p>20 able to explain that to you.</p> <p>21 Q. Okay. And so these are some kind of</p> <p>22 structured security, and you say the "racers are</p> <p>23 RV with LCPI." What did you mean by that?</p> <p>24 A. Racers RV stands for reverse repo.</p> <p>25 Q. Okay.</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

<p style="text-align: right;">Page 138</p> <p>1 HIGHLY CONFIDENTIAL - D. PETRIE 2 (Document review.) 3 A. Okay, I've read it. 4 Q. Can you help us understand what you 5 have written down here? 6 A. I have the name John Rodefeld with the 7 phone number 646-541-8046. 8 Q. Who is John Rodefeld? 9 A. The head of Operations at Barclays. 10 John Haley, who also works in 11 Operations at Barclays, and I have Ed Lane, who 12 worked for me. 13 Q. The next set of text that appears 14 below there? 15 A. "Friday morning, John Haley," I 16 believe it says "Cusips and quantify everything 17 from Lehman." The number 8500. "That is what 18 settled. More items later today. Guess a few 19 hundred. 1.040 billion mid value." 20 Q. And do you know what that was a 21 reference to? 22 A. Other than collateral coming into 23 Barclays, I wouldn't know what it's satisfying, 24 so no. 25 Q. Turning to page 871, carries the date TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 139</p> <p>1 HIGHLY CONFIDENTIAL - D. PETRIE 2 of 9/21/08, do you see that? 3 A. Yes, I see it. 4 Q. That's the Sunday? I believe it is 5 Sunday. 6 A. Yeah, okay. 7 Q. Do you recall being involved in 8 collateral movement or collateral 9 movement-related issues on that Sunday, the 10 21st? 11 A. Just give me a moment, please, to read 12 through it. 13 Q. Sure. 14 (Document review.) 15 A. I vaguely remember a phone call that 16 day. 17 Q. And your notes concern that call? 18 A. Yes. 19 Q. And can you help us decipher your 20 notes and tell us a little bit what that call 21 was about? 22 A. It appears that DTC is trying to work 23 out some operational issues regarding transfer 24 of collateral, that would be the limit of my 25 knowledge, and giving some sort of timeframe as TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 140</p> <p>1 HIGHLY CONFIDENTIAL - D. PETRIE 2 to how long that should take. 3 Q. Are you aware of any understanding or 4 agreement that was reached with DTC either that 5 weekend or shortly thereafter? 6 A. Only to the extent as to what is noted 7 here in my notes. 8 Q. If you go further down in this exhibit 9 to page 873, 874 and 875, they appear to be 10 spreadsheets. Can you tell what those documents 11 are? 12 A. The first two pages I believe are 13 identical. The document appears to be a list of 14 securities that were not part of the Fed repo 15 trade. 16 Q. How do you know they were not part of 17 the Fed repo trade? 18 A. I believe these securities represent 19 what was funded outside of the Fed repo trade 20 that occurred on Thursday, and this list was 21 provided to me I believe the Monday after the 22 transaction occurred. 23 Q. How can you tell all that just by 24 looking at these sheets of paper? How do you 25 know all that? TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 141</p> <p>1 HIGHLY CONFIDENTIAL - D. PETRIE 2 A. On Monday morning, which would be the 3 22nd, I believe, is that correct? 4 Q. Yes, 22nd. 5 A. I was called in to an office around 6 3:30, between 3 and 3:30 in the morning to 7 discuss the \$7 billion that JPMorgan had 8 originally given or pledged to Barclays in cash, 9 and there was an attempt to reach a settlement 10 of that \$7 billion. 11 Part of that settlement JPMorgan had 12 attempted to include securities that were not 13 part of the Fed trade, and by nature of the 14 funding that we know that occurred that week, 15 there were assets that were being funded outside 16 of the Fed trade that included collateral that 17 would not be acceptable collateral to Barclays, 18 and one piece of that collateral is noted here 19 in this schedule that you have presented in 20 front of me. 21 Q. And you're looking at page 874, the 22 item that reads "racer"; is that the one you're 23 referring to? 24 A. Yes. 25 Q. On the next page, 875, that's your TSG Reporting - Worldwide (877) 702-9580</p>

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<p>1 HIGHLY CONFIDENTIAL - D. PETRIE 2 handwriting on that page, right? 3 A. The writing that says, "We need sent 4 to SK" is my handwriting. Below that is not my 5 handwriting. 6 Q. Okay. And who's SK? 7 A. Stephen King. 8 Q. And the notation that appears below 9 that handwriting, "7.4 for 8.55," do you have 10 any understanding of what that means? 11 A. No. 12 Q. And any understanding whose 13 handwriting that is? 14 A. No. 15 Q. The table that appears on that page of 16 875 has a total sum of collateral value, at 17 least in the "Grand Total" column, of 15.8 18 billion. Do you see that? 19 A. Yes. 20 Q. Do you have any understanding as to 21 what that number means? 22 A. Collateral that was left funded by 23 other means outside of the Fed repo trade that 24 we had executed, Barclays executed with Lehman 25 at the behest of the Fed. TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - D. PETRIE 2 Q. On the Wednesday, the 17th, the amount 3 of the funding that was done through the 4 tri-party repo was about \$15.8 billion, correct? 5 A. Yes. 6 Q. Is there any connection between that 7 15.8 and this 15.8 on this page, page 875, 8 Exhibit 272? 9 A. I believe there could be a reasonable 10 connection. 11 Q. What is that reasonable connection? 12 A. If Lehman's only means of funding 13 itself was with the Fed and JPMorgan prior to 14 that week beginning, and there had been a 15 tri-party outside of the Fed trade that we were 16 stepping into, then this number could reflect 17 the number that was being funded outside of the 18 Federal Reserve funding. 19 Q. Okay. I've handed you, sir, a 20 two-page document previously marked Exhibit 133. 21 Take a look at it and let me know when you're 22 done. 23 (Document review.) 24 A. Okay. 25 Q. Turning to the second page of this TSG Reporting - Worldwide (877) 702-9580</p>
Page 144	Page 145
<p>1 HIGHLY CONFIDENTIAL - D. PETRIE 2 Exhibit 133, there's a small spreadsheet that 3 appears there, do you see that? 4 A. I see it. 5 Q. Do you have an understanding as to 6 what information is contained on that 7 spreadsheet? 8 A. I've never seen this spreadsheet. 9 (Exhibit 275, a document bearing Bates 10 Nos. BCI-EX-81015 through 81016, marked for 11 identification, as of this date.) 12 Q. I handed you a two-page document 13 marked Exhibit 275. Take a moment to look at 14 it. Let me know when you're done. 15 (Document review.) 16 A. I have looked over it. 17 Q. Have you seen this e-mail before 18 today? 19 A. No, I haven't. 20 Q. You'll see this is an e-mail from 21 Jasen Yang to Archie Cox of Barclays, do you see 22 that? 23 A. I do. 24 Q. Who is Jasen Yang? 25 A. Jasen Yang worked for Stephen King. TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - D. PETRIE 2 Q. And who is Archie Cox? 3 A. Archie Cox is a chairman of North 4 America for Barclays. 5 Q. And do you see this is a valuation of 6 collateral as provided for by BONY? 7 A. I wouldn't be able to comment. I 8 don't know. 9 Q. Did you receive any valuations from 10 BONY on and after the 19th for the Fed repo 11 collateral? 12 A. No. 13 Q. We talked earlier about a 42.6 or 42.7 14 billion dollar number as a number you associated 15 with the value of the collateral transferred on 16 the night of the 18th, correct? 17 A. Yes. 18 Q. Okay. Are you aware of a BONY 19 valuation of that collateral of about \$45 20 billion? 21 A. I'm aware that there were, like I said 22 earlier in my testimony, it was a highly 23 volatile market and that having a discrepancy in 24 valuations or movement, I should say, in 25 valuations was to be expected. TSG Reporting - Worldwide (877) 702-9580</p>

<p style="text-align: right;">Page 146</p> <p>1 HIGHLY CONFIDENTIAL - D. PETRIE</p> <p>2 Q. Were you aware of a BONY valuation for</p> <p>3 that collateral as of Thursday night, the values</p> <p>4 as of Thursday night, of \$45 billion?</p> <p>5 A. No.</p> <p>6 Q. Are you aware of any valuations by</p> <p>7 BONY, any specific valuations by BONY for that</p> <p>8 Fed repo collateral?</p> <p>9 A. Am I aware of any specific</p> <p>10 valuations --</p> <p>11 Q. By BONY.</p> <p>12 A. -- by BONY?</p> <p>13 BONY, as our custodian, is the one</p> <p>14 that values the collateral.</p> <p>15 Q. Are you aware of any specific values</p> <p>16 put by BONY on the Fed repo collateral that was</p> <p>17 transferred over on the 18th?</p> <p>18 A. No.</p> <p>19 Q. Would that information not have</p> <p>20 crossed your desk on the 19th, the 20th, the</p> <p>21 21st?</p> <p>22 A. Your question said "specific</p> <p>23 valuations." My desk, as mentioned in the very</p> <p>24 beginning of the testimony, like any other repo</p> <p>25 desk on Wall Street, is to finance the firm.</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 147</p> <p>1 HIGHLY CONFIDENTIAL - D. PETRIE</p> <p>2 So, as collateral enters Barclays, my group and</p> <p>3 myself's number one job is to finance it.</p> <p>4 So, to the extent that the value of</p> <p>5 the collateral held by Barclays Capital went up,</p> <p>6 I would then raise, or my group would raise,</p> <p>7 cash to meet that obligation in financing it.</p> <p>8 Q. I've handed you a multi-page document</p> <p>9 previously marked as Exhibit 83B. Take a moment</p> <p>10 to look at the document and the spreadsheet</p> <p>11 attached in the document. Let me know when</p> <p>12 you're done.</p> <p>13 (Document read.)</p> <p>14 A. I've read it.</p> <p>15 Q. Have you seen this document before</p> <p>16 today?</p> <p>17 A. No.</p> <p>18 Q. Do you have any understanding of the</p> <p>19 information that's contained in the spreadsheet</p> <p>20 attached to this Exhibit 83B?</p> <p>21 A. Yes, I have some understanding.</p> <p>22 Q. What's your understanding of what that</p> <p>23 spreadsheet is?</p> <p>24 A. Given that Barclays Capital had</p> <p>25 received many different asset classes of</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 148</p> <p>1 HIGHLY CONFIDENTIAL - D. PETRIE</p> <p>2 securities from Lehman Brothers in taking the</p> <p>3 Fed out of its trade, there was an attempt by</p> <p>4 Stephen Sell to have those securities under the</p> <p>5 watchful eye of the relevant trading desks to</p> <p>6 manage the risk associated with those different</p> <p>7 asset classes would be -- you asked my opinion.</p> <p>8 I can't speak for Stephen Sell, but --</p> <p>9 I haven't seen the document, but that's my</p> <p>10 opinion.</p> <p>11 Q. Do you see the two bullet points on</p> <p>12 the first page of the exhibit, Exhibit 83B, the</p> <p>13 first bullet point reads, "We should book all</p> <p>14 positions from the Lehman financing facility to</p> <p>15 BCI (45 billion securities - see attached</p> <p>16 file)."</p> <p>17 Do you see that?</p> <p>18 MR. SHAW: Objection.</p> <p>19 Mischaracterizes the document.</p> <p>20 Q. Do you see that bullet point?</p> <p>21 MR. SHAW: Objection.</p> <p>22 Mischaracterizes the document.</p> <p>23 MR. TAMBE: Whether he sees the</p> <p>24 document?</p> <p>25 MR. SHAW: The document you described</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 149</p> <p>1 HIGHLY CONFIDENTIAL - D. PETRIE</p> <p>2 does not exist because you left out a</p> <p>3 critical piece of information.</p> <p>4 Q. The first bullet point on page 1 of</p> <p>5 Exhibit 83B, do you see that first bullet point?</p> <p>6 A. I see the first bullet point.</p> <p>7 Q. This parentheses it "45 billion</p> <p>8 securities - see attached file," do you see</p> <p>9 that?</p> <p>10 MR. SHAW: Objection.</p> <p>11 Mischaracterizes the document.</p> <p>12 MR. TAMBE: How does that</p> <p>13 mischaracterize the document?</p> <p>14 MR. SHAW: You have left out the</p> <p>15 little mark that generally indicates --</p> <p>16 well, I know what it generally indicates to</p> <p>17 me and what I understand it is</p> <p>18 approximately.</p> <p>19 Q. Okay. "Approximately \$45 billion in</p> <p>20 securities," do you see that?</p> <p>21 A. Yes, I see that --</p> <p>22 Q. The squiggly line?</p> <p>23 A. I would read it, "We should book all</p> <p>24 positions from the Lehman financing facility to</p> <p>25 BCI (approximately 45 billion securities - see</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

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1 HIGHLY CONFIDENTIAL - D. PETRIE
2 attached file)."

3 Q. That's the file we were talking about
4 before, the spreadsheet that's attached to the
5 cover sheet?

6 A. The file that you said -- yes, the
7 spreadsheet that I haven't seen before until
8 now, and if it adds up to 45, approximately 45
9 billion, then, okay, then that's the file we
10 were talking about.

11 Q. And the next bullet point states, "We
12 should book based on the price within the BONY
13 file, at least for Day 1." Do you see that?

14 A. I see that statement.

15 Q. And taking those two bullet points
16 together, do you understand that as Mr. Sell
17 saying that the BONY prices were used for
18 booking these trades into the Barclays system,
19 at least for Day 1?

20 MR. SHAW: Objection.
21 Mischaracterizes the document.

22 A. I don't know what Stephen Sell was
23 trying -- what he was saying here.

24 Q. What do you understand those two
25 bullet points to mean there?

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1 HIGHLY CONFIDENTIAL - D. PETRIE

2 A. In Barclays' books and records, you
3 have to characterize these assets being held in
4 a price that is a starting price from whence you
5 held them.

6 Q. Okay. And you understand this e-mail
7 as saying that those prices should be the BONY
8 prices, correct?

9 A. I can't speak for Stephen Sell.

10 Q. That's what the e-mail said. Do you
11 read that? Do you understand the e-mail as
12 saying that?

13 A. It appears that's what he's saying.

14 Q. And do you know, based on how these
15 trades were booked to the Barclays system,
16 whether they in fact were booked to the BONY
17 prices on day one?

18 A. I don't know.

19 Q. Who would know that?

20 A. I would suggest speaking to Stephen
21 Sell.

22 Q. You said many, many times today that
23 there was a lot of volatility that week. If it
24 was up to you, what -- what day's prices should
25 have been used to book these assets when they

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1 HIGHLY CONFIDENTIAL - D. PETRIE
2 were booked in Barclays' books?

3 MR. SHAW: Objection to form.

4 A. If it was up to me, at what prices
5 should the assets that came over from the Fed
6 repo trade been booked at; am I characterizing
7 your question correctly?

8 Q. Not quite. What day's prices would
9 you have used?

10 MR. SHAW: Objection to form.

11 Q. Thursday's prices? Friday's prices?
12 Monday's price?

13 MR. SHAW: Objection to form.

14 A. I'm not an accountant, so I wouldn't
15 know what day to use.

16 Q. But you run the repo desk, right?

17 A. Right, for financing --

18 Q. You need to know what you have on your
19 assets so you know what you financed, right?
20 You need to have some sense of what prices
21 you're going to use?

22 A. For financing the positions, it would
23 be current market value.

24 Q. So you'd use the prices of the day you
25 got the assets into your books?

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1 HIGHLY CONFIDENTIAL - D. PETRIE

2 MR. SHAW: Objection to form.

3 A. Buying a security and financing a
4 security, the price that you paid for the
5 security versus where you finance that security
6 can differ to the extent of market volatility.

7 Q. A lot of things can differ, okay? Do
8 you have any procedures or rules that you follow
9 when you get securities and you lend money? Are
10 you required to follow any particular pricing
11 convention or methodology?

12 MR. SHAW: Objection to form,
13 foundation, and vague as to who the "you" is
14 in that question.

15 Q. You, Mr. Petrie. Is there a problem
16 with "you"? Is it unclear to you as to who the
17 "you" is in my question?

18 A. I'm glad you clarified it, meaning my
19 attorney.

20 In running a repo desk, every day you
21 come into a new day where the market has moved
22 up or down, and you use, you can only use,
23 whatever market value of the securities that are
24 within Barclays Capital to raise cash.

25 Q. And where Barclays is using a

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1 HIGHLY CONFIDENTIAL - D. PETRIE
2 tri-party arrangement and there's a custodian
3 and the custodian has assigned prices to those
4 securities, are you required to use those
5 prices?

6 MR. SHAW: Objection to form.
7 Foundation.

8 A. Bank of New York, being our custodian,
9 prices our securities, and when we lend those
10 securities, the value that we lend those
11 securities at is the money that we're able to
12 borrow to finance the firm.

13 Q. And whose values do you use, Bank of
14 New York's values or your values?

15 A. Bank of New York's.

16 Q. Thank you. I have placed before you a
17 two-page document previously marked Exhibit
18 147A. Take a moment to review the document.
19 Let me know when you're done.

20 (Document review.)

21 A. Okay. I've finished it.

22 Q. Have you seen this document before
23 today?

24 A. No.

25 Q. There's a reference in the first

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1 HIGHLY CONFIDENTIAL - D. PETRIE
2 e-mail at the top of page 1 to \$1.9 billion of
3 additional collateral. Do you see that?

4 A. Yes, I see it.

5 Q. Do you recall having any discussions
6 with anyone on or after the 19th of September
7 about \$1.9 billion of additional collateral?

8 A. No.

9 Q. I have handed you a document marked
10 144A. Take a moment to look at that document.
11 Let me know when you're done.

12 A. I'm finished.

13 Q. There's a forward of an e-mail on this
14 exhibit, and the e-mail is from Marty Malloy to
15 Gerard LaRocca and others. Do you see that?

16 A. Yes.

17 Q. Okay. Who's Marty Malloy?

18 A. Marty Malloy is a managing director in
19 the Collateralized Finance Group.

20 Q. And in terms of seniority, how does he
21 fit in with Mr. Dearlove and others we have
22 discussed?

23 A. He's a senior member of the Barclays
24 team, so relatively on par.

25 Q. There's a CC shown on his e-mail,

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1 HIGHLY CONFIDENTIAL - D. PETRIE
2 Jacqui Stanley-Johns. Do you see that?

3 A. I see that.

4 Q. Is that a name you're familiar with?

5 A. No.

6 Q. And you see the subject line of this
7 e-mail, "Totals For the Fed Facility
8 Collateral," do you see that?

9 A. I see that.

10 Q. And are you familiar with this
11 calculation that appears below in his e-mail?

12 A. No.

13 Q. You haven't seen that before today?

14 A. No, I have not.

15 MR. TAMBE: Let me take a short break.
16 (Recess; Time Noted: 3:22 P.M.)
17 (Time Noted: 3:31 P.M.)

18 BY MR. TAMBE:

19 Q. Mr. Petrie, were you involved at all
20 in helping Barclays' auditors account for the
21 value of the securities that were purchased in
22 the Lehman/Barclays transaction?

23 A. No.

24 Q. I'm showing you what's previously been
25 marked as Exhibit 86B. Just take a look at it

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1 HIGHLY CONFIDENTIAL - D. PETRIE
2 and tell me if you've ever seen that document
3 before.

4 (Document review.)

5 A. No, I have not.

6 Q. There's a column on page 1 of Exhibit
7 86B, column F, titled "PCG Liquidity Value." Do
8 you see that?

9 A. Yes, I see it.

10 Q. And do those words have any meaning to
11 you?

12 A. Yes.

13 Q. What is your understanding of what
14 those words mean?

15 A. Product Control Group liquidity value.

16 Q. And do you have an understanding as to
17 the calculations that are being done in that
18 column on page 1 of 86B?

19 A. No, I do not.

20 Q. I've handed you a one-page document
21 previously marked as 87B. Have you seen this
22 document before today?

23 A. No.

24 Q. There's a column F on this document
25 87B entitled "MV w Liquidity," do you see that?

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1 N. PURCELL

2 UNITED STATES BANKRUPTCY COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 -----x

5 In Re:

6 Chapter 11

7 LEHMAN BROTHERS

Case No. 08-13555(JMP)

8 HOLDINGS, INC., et al., (Jointly Administered)

9 Debtors.

10 -----x

11
12
13
14 VIDEOTAPED DEPOSITION OF NOEL PURCELL

15 New York, New York

16 January 13, 2010

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23 Reported by:

24 KATHY S. KLEPFER, RMR, RPR, CRR, CLR

25 JOB NO. 27089

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N. PURCELL

Q. And do you understand that the topics that we plan to cover relate to the sale transaction involving Lehman and Barclays --

A. I do.

Q. -- from September 2008?

A. Yes.

Q. And you understand that the topics relate to the Committee's understanding and evaluation of that transaction?

A. I do.

Q. When was the Committee first formed, to the best of your recollection?

A. "When formed," you mean?

Q. When did the Committee first start to conduct business?

A. The Committee was formed on September 17, 2008, with our first meeting that morning to begin to select the professionals.

Q. I placed in front of you a blank calendar for the month of September 2008 because we'll be focusing largely on that time period.

Do you understand that on September 19, there was a hearing in the Bankruptcy Court concerning approval of the sale transaction?

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N. PURCELL

aspects of the estate, funding issues, liquidity issues, and that included things like sale of certain assets, but we went into no detail that evening. We didn't have much detail to discuss.

Over the next two days, there was several calls back and forth, I don't believe we got together directly, to discuss a whole host of issues within the estate. One of those issues was the Barclays transaction and what it was that we knew about the Barclays transaction at that point in time.

Q. In this period from the 17th through the 19th, did the Committee members themselves have any direct contact with the parties to the sale transaction?

A. Can you define "parties"?

Q. Yes. Lehman on the one hand and Barclays on the other hand and their respective lawyers and financial advisors. So that would mean, basically, you know, Lehman executives, Barclays executives, Weil Gotshal, Lazard.

A. No.

Q. And my --

A. I'm sorry.

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N. PURCELL

A. I do.

Q. Can you tell me from the period when the Committee was formed through the time of that Approval Hearing what the Committee did in order to understand and evaluate the sale transaction?

MR. SZYFER: Objection to form.

A. On September 17, the Committee took most of the day to put together a professional team. So for most of that day and that evening up until about 11:30 that night, there really wasn't much discussion about the business aspects of Lehman Brothers. It was more putting together the administrative function of the team.

Late that evening, there was a discussion amongst the team, which included the Milbank lawyers and the U.C.C. who were there at the time, some of their representatives and the U.C.C., including Stroock & Stroock & Lavan and the attorneys for some of the other parties on the U.C.C., about some of the urgent natures within Lehman Brothers' estate.

That included a number of different

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N. PURCELL

Q. I'm sorry. And my question goes to whether the Committee members themselves had any direct contact with those parties.

A. No.

Q. The Committee's contact with those parties was through its professionals; is that right?

A. Yes, it was.

Q. Would the same be true for the period from the 19th through the closing of the sale transaction on September 22?

MS. TAGGART: Object to form.

MR. SZYFER: And when you say "the same," you're talking about the Committee's contact was through its professionals with those parties that you listed in the question before?

MR. STERN: Sure. Yes.

Q. Let me spell it out so that the record is clear.

Did the Committee in the period from the 19th through the closing of the sale transaction on September 22 have any direct contact with the parties to the sale

1 N. PURCELL
2 transaction?
3 A. No.
4 Q. All the Committee's contacts were done
5 through its professionals?
6 A. Yes.
7 Q. And in the period from the 17th
8 through to the closing to the 22nd, when the
9 Committee sought to raise questions or express
10 its views concerning the transaction, am I
11 correct that that was also done through the
12 Committee's professionals?
13 A. Yes.
14 Q. In the period from the 17th through
15 the closing on the 22nd, was there any
16 information concerning the sale transaction that
17 the Committee got independent of what it learned
18 from its professionals?
19 MS. TAGGART: Object to form.
20 Q. To the best of your recollection.
21 A. No.
22 Q. So, in the period from the 17th
23 through the 22nd, to the best of your
24 recollection, the Committee did not receive
25 information concerning the sale transaction

1 N. PURCELL
2 independent of what it learned from its
3 professionals; is that correct?
4 MS. TAGGART: Object to form.
5 A. Yes.
6 Q. Now, after the closing -- now, after
7 the closing on September 22, 2008, and going
8 into the end of September and the month of
9 October, did the Committee have any direct
10 contact with Alvarez & Marsal concerning the
11 transaction?
12 A. Yes.
13 Q. And what was that contact?
14 A. In early October, if I remember
15 correctly, there was a meeting of the Unsecured
16 Creditors Committee together with various
17 representatives of the estate, Alvarez & Marsal,
18 Brian Marsal and some of his team to discuss all
19 the urgent factors that were going on in the
20 estate and what they knew at that time.
21 Q. Do you recall who attended that
22 presentation from the Creditors Committee?
23 MR. SZYFER: Object to the form.
24 A. I believe all of the standing
25 Unsecured Creditor Committee members were there.

1 N. PURCELL
2 I think that's it. Yeah.
3 Q. Do you recall who else was at that
4 presentation outside of Creditors Committee
5 members?
6 And I'm just asking for your best
7 recollection. I realize it as was a long time
8 ago.
9 A. Sure. I think various counsel
10 representing members of the U.C.C. directly.
11 For my benefit, Mark Speiser from Stroock &
12 Stroock & Lavan was there. I believe Michael
13 Hawkins from Covington & Burling was there
14 representing Julie Becker. I believe, and I
15 can't remember who specifically from Houlihan,
16 but I believe Houlihan & Lokey representatives
17 were there. FTI representatives were there,
18 together with Milbank counsel.
19 Q. Do you recall whether anybody from
20 Weil Gotshal attended that presentation?
21 A. I don't recall.
22 Q. One way or the other?
23 A. One way or the other.
24 Q. Do you recall whether anybody from
25 Lazard attended that presentation?

1 N. PURCELL
2 A. I don't recall one way or the other.
3 Q. Other than the Alvarez presentation in
4 early October, in this period after the closing
5 on September 22 through the end of October 2008,
6 to the best of your recollection, did the
7 Committee members have any direct contact with
8 any of the parties to the transaction or their
9 professionals?
10 A. By "direct," can you define "direct"
11 for me?
12 Q. By "direct," I mean a situation like
13 the Alvarez presentation, where the Committee
14 was speaking directly or was hearing directly
15 from Alvarez as opposed to communicating through
16 its counsel or financial professionals. Does
17 that help?
18 A. Yes.
19 Q. Okay.
20 A. No, I do not believe so.
21 Q. So, other than the Alvarez
22 presentation in early October, in this period
23 from September 22 through the end of October
24 2008, to the best of your recollection, the
25 Committee did not have direct contact with the

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1 N. PURCELL
2 parties to the transaction or their
3 representatives; is that your best recollection?
4 A. Yes.
5 MR. SZYFER: Just to be clear, Mr.
6 Stern, are you counting Alvarez & Marsal as
7 a representative of one of the parties since
8 Alvarez & Marsal is, in a sense, working for
9 Lehman?
10 MR. STERN: Yes.
11 MR. SZYFER: Okay. I just want to
12 make sure that you understand that
13 clarification.
14 A. Can you restate the question with that
15 clarification, please?
16 Q. Sure. So, other than the Alvarez
17 presentation in early October, in this period
18 from September 22, 2008, through the end of
19 October 2008, to the best of your recollection,
20 is it correct that the Committee did not have
21 direct communications with the parties to the
22 transaction or their representatives?
23 A. Yes.
24 (Exhibit 519B, a document bearing
25 Bates Nos. CMTE0007889 through 8244, marked

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1 N. PURCELL
2 for identification, as of this date.)
3 (Discussion off the record.)
4 THE VIDEOGRAPHER: The time is now
5 9:49 A.M. We are now back on the record.
6 BY MR. STERN:
7 Q. Mr. Purcell, looking at Exhibit 519B,
8 if you could review this document which was
9 produced to us by the Committee and tell me if
10 you understand what it is or if you recall what
11 it is.
12 A. Looks to be a series of e-mails
13 between members of the Committee and Committee
14 counsel, regarding exactly what I don't know --
15 portions of it are redacted -- referencing
16 certain calls, including the Neuberger Committee
17 call at 9:30 on 10/16.
18 Q. And after the series of e-mails, there
19 is a page that in the upper left says DTC074.
20 Do you see that?
21 A. I do.
22 Q. Do you know what this page is?
23 A. I do not.
24 MR. STERN: Let me mark this as the
25 next exhibit.

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1 N. PURCELL
2 (Exhibit 520B, a document bearing
3 Bates Nos. CMTE0001047 through 1049, marked
4 for identification, as of this date.)
5 Q. I'll ask you to please read through
6 that and then I'll have some questions for you
7 about it.
8 (Document review.)
9 A. Okay, Mr. Stern.
10 Q. Have you ever seen Exhibit 520B before
11 today?
12 A. No, I have not.
13 Q. Did you review it in preparing for
14 today's deposition?
15 A. No, I did not.
16 Q. Before I get to the specifics of 520B,
17 let me ask you a general question. In the
18 period from September 17 through the closing of
19 the sale transaction on September 22, what
20 factors did the Committee consider in evaluating
21 whether to object to the sale transaction?
22 MR. SZYFER: Object to the form.
23 MS. TAGGART: I'm going to object to
24 the form and I'm also going to instruct not
25 to answer on privilege on that basis, on

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1 N. PURCELL
2 work product and attorney-client.
3 Q. Turning to Exhibit 520B, if you look
4 on the page that bears the Bates number ending
5 1048 in the bottom half of that page, there's an
6 e-mail from -- and I'm not sure I'm going to
7 pronounce this correctly -- Nitin Bajpai. Do
8 you see that?
9 A. I do. I don't know how to pronounce
10 his name either.
11 Q. Do you know who that is, Bajpai?
12 A. I do not.
13 Q. Was Shinsei International at any point
14 a member of the Creditors Committee?
15 A. I don't know Shinsei's -- the exact
16 entity that Shinsei represented within its
17 organization of the Committee. I don't know the
18 exact term. I do not believe Shinsei
19 International is that entity.
20 Q. Was there any Shinsei entity -- and
21 that's S-H-I-N-S-E-I -- was there any Shinsei
22 entity that at any time was a member of the
23 Creditors Committee?
24 A. Yes.
25 Q. Did Shinsei at some point cease to

Page 18	Page 20
<p>1 N. PURCELL 2 become a member of the Creditors Committee? 3 MR. SZYFER: And are you now -- are 4 you referring to the Shinsei entity that Mr. 5 Purcell has mentioned or are you just 6 discussing Shinsei International or any 7 generic Shinsei entity? 8 Q. Well, what is the Shinsei entity, to 9 the best of your knowledge, that is a member of 10 the Creditors Committee? 11 A. I only know it as Shinsei. 12 Q. Okay. Did Shinsei ever cease to 13 become a member of the Creditors Committee? 14 A. Yes. 15 Q. And when did that happen? 16 A. I believe Shinsei resigned from the 17 Committee in early December 2009. 18 Q. Shinsei was a member of the Creditors 19 Committee in September 2008, correct? 20 A. Yes. 21 MS. TAGGART: Object to form. 22 Q. Do you know who Nitin Bajpai is? 23 A. I do not. 24 Q. Do you know who Sally Rocker is? 25 A. I do not.</p>	<p>1 N. PURCELL 2 MR. SZYFER: Objection to the form. 3 A. The Committee looked at the entire 4 transaction and the lack of data supporting all 5 facts of the transaction as a problem. Options 6 and who else might be a possible buyer was also 7 a concern, as all other assets -- all other 8 aspects of this transaction were. 9 Q. In considering the lack of data 10 supporting all facts of the transaction to be a 11 problem, did the Committee consider whether it 12 should object on that basis? 13 MS. TAGGART: Object on form, 14 privilege, and I'm going to instruct not to 15 answer on attorney-client and work product 16 privileges. 17 Q. Did the Committee ever object to the 18 sale transaction based on what you referred to 19 as the lack of data? 20 A. Object? Can you define "object"? 21 Q. Did the Committee ever tell Judge Peck 22 that it objected to the transaction because of 23 the lack of data? 24 MS. TAGGART: Object to form. 25 A. And when you mean "Committee," you</p>
Page 19	Page 21
<p>1 N. PURCELL 2 Q. Who -- do you know who Ed Gilbert is? 3 A. Yes, I do. 4 Q. And who is he? 5 A. Mr. Gilbert was the representative for 6 Shinsei who interacted with the U.C.C. 7 Q. Turning to the page that ends with the 8 Bates number 1048, and the e-mail that's 9 reflected here is being sent Saturday, September 10 20, 2008, 12:32 A.M. It states in the second 11 paragraph towards the middle, "The current 12 stance of the U.C.C. is not to object, as there 13 does not appear to be a viable option, and the 14 judge seems determined to move the process along 15 and to approve the sale, even while he 16 acknowledges that there is insufficient 17 information, but cites the necessity to preserve 18 financial stability as an overriding concern." 19 Do you see that? 20 A. I do. 21 Q. To your knowledge, at any time between 22 September 17 and the closing on September 22 did 23 the Committee take into consideration in 24 evaluating the sale transaction whether there 25 was a viable option?</p>	<p>1 N. PURCELL 2 mean the direct Committee members or you mean 3 the Committee advisors? 4 Q. The Committee in whatever way it 5 communicated with the Court. 6 A. I believe the Committee indicated to 7 Judge Peck on a number of occasions that we were 8 troubled with the fact that we didn't have all 9 the details of the transaction. If you consider 10 that an objection from your defined term, then 11 we objected. 12 Q. Did the Committee, to your knowledge, 13 ever object to the sale transaction before Judge 14 Peck? 15 MS. TAGGART: Object to form. 16 A. Again, the "Committee" meaning its 17 advisors or the Committee? 18 Q. The Committee appeared before Judge 19 Peck through its counsel, correct? 20 A. Yes. 21 Q. Okay. To your knowledge, did the 22 Committee's counsel ever indicate to the Court 23 that the Committee objected to the sale 24 transaction? 25 A. I do not believe the Committee</p>

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1 N. PURCELL
2 formally objected to the transaction. The
3 Committee certainly expressed its concerns about
4 the details of the transaction and the lack
5 thereof.
6 Q. But the Committee did not object; is
7 that right?
8 MS. TAGGART: Objection. Asked and
9 answered.
10 A. Formally, no.
11 Q. And in light of the concerns that you
12 just described, why did the Committee not
13 object?
14 MS. TAGGART: Objection --
15 MR. SZYFER: Objection.
16 MS. TAGGART: -- to form and to
17 privilege, and I'm going to instruct not to
18 answer on attorney-client and work product
19 privileges.
20 Q. In deciding not to object, despite the
21 Committee's concerns about lack of information,
22 did the Committee take into consideration the
23 lack of a viable option?
24 MS. TAGGART: Same objections and same
25 instructions. So I'm instructing not to

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1 N. PURCELL
2 answer on privileges.
3 Q. In deciding not to object, despite the
4 Committee's concerns about lack of information,
5 did the Committee take into consideration any
6 concerns about preserving financial stability?
7 MS. TAGGART: Same objections and same
8 instruction.
9 Q. Before the transaction closed on
10 September 22, did the Committee ever consider
11 taking any action to block the closing?
12 MS. TAGGART: I'm going to -- same
13 objections and instruction. So I'm going to
14 instruct you not to answer on privileges.
15 Q. In deciding not to object to the
16 transaction, did the Committee ever take into
17 consideration the effect on the
18 debtor-in-possession financing for Lehman if the
19 transaction did not go through?
20 MS. TAGGART: Same objections and
21 instruction.
22 Q. In deciding not to object to the sale
23 transaction, did the Committee ever take into
24 consideration the views of various government
25 agencies?

Page 24

1 N. PURCELL
2 MS. TAGGART: I'm going to object and
3 instruct on that basis. If you want to ask
4 questions about what input they had about
5 various government agencies, there may be
6 information we would allow.
7 Q. What did the Committee know about the
8 views of various government agencies concerning
9 the sale transaction?
10 MS. TAGGART: And let me explain our
11 position on this. We are willing to have
12 him testify about the Committee's
13 understanding on this issue, but not the
14 communications to the extent it came from
15 counsel, but I would ask an agreement that
16 that not be a waiver to any privilege to the
17 extent that that issue was discussed among
18 counsel.
19 So if I can have that agreement, then
20 he can answer that question.
21 MR. STERN: I'm not going to engage in
22 this kind of a negotiation on the record.
23 I'm just going to ask my questions and you
24 can either instruct him not to answer,
25 object, or let him answer.

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1 N. PURCELL
2 Q. What did the Committee know about the
3 views of various government agencies concerning
4 the sale transaction?
5 MS. TAGGART: Okay. Then I'm going to
6 object and give this instruction, which is,
7 in light of the fact that counsel for
8 Barclays will not agree to say that it's not
9 a waiver, and I understand that some of the
10 information came to you through counsel, why
11 don't you only say if you received any
12 information that was not from your
13 professionals and not from counsel that was
14 about the issue of the views of various
15 government agencies concerning the sale
16 transaction.
17 So if you received information about
18 the views of various government agencies
19 concerning the sale transaction from someone
20 other than your professionals and your
21 counsel, you should answer.
22 A. We did not receive any information
23 about various government agencies and their
24 views on this transaction from counsel or from
25 any other -- any other position.

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<p>1 N. PURCELL 2 him not answer -- you will allow him to 3 answer? 4 MS. TAGGART: Yes. And to be clear, 5 if you say what was the Committee's 6 understanding at certain times and on 7 certain issues, he can testify about the 8 Committee's understanding that came from all 9 sources so long as you don't -- agree that 10 that's not a waiver as to the 11 communications, yes, we would allow those 12 questions. 13 MR. STERN: I'll agree on that limited 14 basis and then ask my questions. 15 Do you need to take a break? 16 MS. TAGGART: Yeah. 17 MR. STERN: Okay. 18 MS. TAGGART: Thank you. 19 THE VIDEOGRAPHER: The time is now 20 10:20 A.M. We are now off the record. 21 (Recess.) 22 THE VIDEOGRAPHER: The time is now 23 10:26 A.M. We are now back on the record. 24 BY MR. STERN: 25 Q. Picking up from the last colloquy and</p>	<p>1 N. PURCELL 2 instructing not to answer on attorney-client 3 and work product to that question. 4 Q. What facts did the Committee know 5 about the DIP financing before the sale 6 transaction closed? 7 MS. TAGGART: Object to form. I will 8 allow you to answer. Please don't disclose 9 any communications that happened with 10 counsel, but you can testify to any facts, 11 if any, that the Committee had on that 12 question, which is about DIP financing 13 before the sale transaction closed. 14 A. I don't believe the Committee had any 15 official understanding of the DIP facility 16 transaction. 17 Q. Did the Committee have any 18 understanding of the facts concerning the 19 positions of various government agencies with 20 respect to the sale transaction? 21 MS. TAGGART: Object to form, but you 22 can answer, to the extent you understand it, 23 with that same instruction: Don't reveal 24 communications with counsel. 25 A. I don't believe the Committee had any</p>
Page 31	Page 33
<p>1 N. PURCELL 2 going back to Exhibit 520B, at the top of the 3 first page of 520B, the first e-mail, which 4 appears to be sent Saturday, September 20, 6:03 5 A.M., says that if the sale was not approved, 6 the DIP would have been due, and if someone 7 hadn't provided a new DIP, the entire stake of 8 the Asset Management Unit could have been 9 foreclosed on. Then it goes on and says "no 10 other DIP lender was forthcoming." 11 What facts was the Committee aware of 12 before closing of the sale transaction 13 concerning what would happen to the DIP 14 financing if the sale transaction was not 15 completed? 16 MS. TAGGART: I'm going to object and 17 instruct not to answer. I understand, given 18 our previous discussion, I should probably 19 explain. 20 He can describe his understanding of 21 the sales transaction regarding facts. Your 22 question I think is going to what might 23 happen in the future, which is analysis, not 24 just facts, such as what is the DIP 25 financing right now. So I am still</p>	<p>1 N. PURCELL 2 official facts regarding the government 3 agencies' position. 4 Q. Did the Committee have any 5 understanding of the facts concerning whether 6 any bidder other than Barclays had submitted a 7 bid? 8 MS. TAGGART: You can answer. 9 A. I don't believe the Committee had any 10 official knowledge of any other bidders, either 11 positively or negatively. 12 Q. Did the Committee have any knowledge 13 of facts concerning whether the Court was 14 determined to move the process along and approve 15 the sale? 16 MS. TAGGART: Objection. And I'm 17 going to instruct not to answer on 18 privilege. I don't think that that's a 19 fact; that's more asking for analysis. 20 Q. Well, you saw in Exhibit 520B that 21 Shinsei made reference to that, correct? 22 MS. TAGGART: Object to form. 23 A. I see that someone from Shinsei 24 indicated that, yes. 25 Q. Okay. And did you see that Shinsei</p>

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<p>1 N. PURCELL</p> <p>2 noted that the Court was concerned with the</p> <p>3 necessity to preserve financial stability as an</p> <p>4 overriding concern?</p> <p>5 MS. TAGGART: Object to form.</p> <p>6 A. Can you point me, counsel, in the</p> <p>7 e-mail to where it says that?</p> <p>8 Q. Sure. Do you see at the bottom of the</p> <p>9 second page of Exhibit 520B that Shinsei states</p> <p>10 as follows: "The current stance of the U.C.C.</p> <p>11 is not to object, as there does not appear to be</p> <p>12 a viable option, and the judge seems determined</p> <p>13 to move the process along and to approve the</p> <p>14 sale, even while he acknowledges that there is</p> <p>15 insufficient information, but cites the</p> <p>16 necessity to preserve financial stability as an</p> <p>17 overriding concern"?</p> <p>18 MS. TAGGART: Is the question --</p> <p>19 MR. SZYFER: Objection.</p> <p>20 MS. TAGGART: -- just does he see it?</p> <p>21 MR. SZYFER: Objection to the form.</p> <p>22 Q. Do you see that statement by Shinsei?</p> <p>23 A. I do see that statement from Nitin</p> <p>24 Bajpai of Shinsei, yes, Shinsei International.</p> <p>25 Q. Do you recall any discussions within</p>	<p>1 N. PURCELL</p> <p>2 judge seems determined to move the process along</p> <p>3 and to approve the sale, even while he</p> <p>4 acknowledges that there is insufficient</p> <p>5 information, but cites the necessity to preserve</p> <p>6 financial stability as an overriding concern?</p> <p>7 MS. TAGGART: Object to form and</p> <p>8 instruct not to answer on attorney-client</p> <p>9 and work product privileges.</p> <p>10 Q. At any point before the closing, did</p> <p>11 the Committee consider that it should not object</p> <p>12 to the sale because, as the Shinsei e-mail</p> <p>13 states, no other bidder submitted a bid, and</p> <p>14 even if the U.C.C. had objected, all indications</p> <p>15 were that the judge would have ruled against it</p> <p>16 and executed the transaction?</p> <p>17 MS. TAGGART: Object to form and</p> <p>18 instruct not to answer on privilege. And</p> <p>19 really I think this is a standing objection</p> <p>20 about why the Committee made the decision</p> <p>21 that it did. That position, that legal</p> <p>22 position, is now on the record both to the</p> <p>23 Court and in our motions.</p> <p>24 What was the considerations behind</p> <p>25 that is privileged, and I do think it's a</p>
Page 35	Page 37
<p>1 N. PURCELL</p> <p>2 the Committee, not involving counsel, concerning</p> <p>3 those points?</p> <p>4 MR. SZYFER: Which points?</p> <p>5 MR. STERN: The points we just read</p> <p>6 from this e-mail.</p> <p>7 MS. TAGGART: Okay. So you can answer</p> <p>8 so long -- was there a discussion with the</p> <p>9 Committee that didn't involve any counsel on</p> <p>10 that subject, and for now just answer yes or</p> <p>11 no to that.</p> <p>12 MR. SZYFER: And are you just</p> <p>13 referring to the sentence you just read or</p> <p>14 other questions that you have asked</p> <p>15 regarding this e-mail, Mr. Stern?</p> <p>16 MR. STERN: I think it's clear.</p> <p>17 MS. TAGGART: Then object to form.</p> <p>18 MR. SZYFER: Yeah, I don't think it</p> <p>19 is. Object to form.</p> <p>20 A. No.</p> <p>21 Q. To the best of your knowledge, at any</p> <p>22 point before the closing did the Committee</p> <p>23 consider that it should not object to the sale</p> <p>24 because, as the Shinsei e-mail states, there</p> <p>25 does not appear to be a viable option and the</p>	<p>1 N. PURCELL</p> <p>2 waste of the time to keep asking that same</p> <p>3 question.</p> <p>4 Q. At any point before the closing, did</p> <p>5 the Committee consider that it should not object</p> <p>6 to the sale because, as the Shinsei e-mail</p> <p>7 states, if the sale was not approved, the DIP</p> <p>8 would have been due, and if someone hadn't</p> <p>9 provided a new DIP, the entire stake of the</p> <p>10 Asset Management Unit could have been</p> <p>11 foreclosed?</p> <p>12 MS. TAGGART: Same objection. Same</p> <p>13 instruction.</p> <p>14 (Exhibit 521B, a document bearing</p> <p>15 Bates Nos. CMTE0000577 through 580, marked</p> <p>16 for identification, as of this date.)</p> <p>17 Q. Before we turn to 521B, and I'll give</p> <p>18 you a chance to review it, let me ask this: In</p> <p>19 deciding whether to object to the sale</p> <p>20 transaction, did the Creditors Committee take</p> <p>21 into consideration any information or any</p> <p>22 factors that the Committee obtained through any</p> <p>23 source other than its counsel and its financial</p> <p>24 advisors?</p> <p>25 MS. TAGGART: I'm going to object as</p>

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worded considering the preface about what went into the determination to object to the sale.

If you, Mr. Stern, would like to ask whether the Creditors Committee had information from any source other than its counsel or its financial advisors, I would allow that question.

MR. STERN: Ms. Taggart, I think you know that the rules do not allow this type of speaking objection. If you have an objection to the form, please state it, but these kinds of speaking objections are really inappropriate.

Can you repeat the question?

(Record read.)

MS. TAGGART: I'm going to object to form and instruct not to answer as worded for the reasons I stated before.

Q. In deciding whether to object to the sale transaction, did the Creditors Committee have information from any source other than its counsel or its financial advisors?

MS. TAGGART: I have to give the same

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instruction and objection, but it's really to the preface. I do think that there's information that you could get if you dropped that preface. That's obviously up to you. To that question I'm instructing not to answer.

Q. In relation to the sale transaction, did the Committee have information from any source other than its counsel or its financial advisors?

MS. TAGGART: I'm going to object to form for vagueness, but you can answer that.

A. Can you repeat the question, please?

Q. In relation to the sale transaction, did the Committee have information from any source other than its counsel or its financial advisors?

A. No.

Q. Why don't you take a moment to read what we have marked as Exhibit 521B.

(Document review.)

A. I've read it, Mr. Stern.

Q. Can you identify this document for us?

A. Yes, I can.

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Q. What is it?

A. It's an e-mail I sent to Committee members on Friday, September 26, 2008, at 10:42 A.M.

Q. Aside from your own counsel at Stroock, did you copy any other counsel?

A. I don't believe I did.

Q. And what was the purpose of this communication?

A. To express to the Committee members directly my personal frustration with the lack of information that the Committee had in making decisions within the estate.

Q. Okay. You write that, "During the past week, Lehman and its related entities, together with their advisors, have engaged in a fire sale disposition of several assets, representing billions of dollars of value to the Creditors of the Debtor entity. We were told by all parties involved that the sale of the following entities had to be consummated immediately or risk losing some or all of the value of the assets for the Creditors."

And do you see that you list various

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entities below that, including the broker-dealer?

A. I do.

Q. And when you refer to the broker-dealer, are you referring to the sales transaction involving Barclays that the Court approved?

A. I am.

Q. And what, to the best of your recollection, were you told as to why the sale of the broker-dealer had to be consummated immediately or risk losing some or all of the value of that asset?

MS. TAGGART: I'm going to object and give the following instruction: Please do not reveal anything that you were told by your financial advisors or your counsel. If you were told or passed on information about what was told through parties such as Lehman or Barclays or other public sources, you can reveal that.

A. There were no other sources of information I had other than our advisors on those issues.

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1 N. PURCELL
2 A. I don't recall reviewing this, no.
3 Q. I'm not going to take you through
4 every aspect of the attachment, but I do want to
5 ask you some specific questions relating to some
6 of the information on the second page of the
7 transcript, which is the Bates number ending
8 9128.
9 Do you see that page?
10 A. I do.
11 Q. Look at the third paragraph. I'll
12 just read it. It states, and this is Mr. Varley
13 speaking: "The acquisition of the core of old
14 Lehman's based around the U.S. broker-dealer
15 operations, we have acquired the associated
16 infrastructure. We will be taking on about
17 10,000 employees. We are acquiring trading
18 assets with a current stated value of \$72
19 billion in trading liabilities with the current
20 estimated value of \$68 billion, for a cash
21 consideration of \$250 million."
22 Do you see that?
23 A. Yes, I do.
24 Q. Do you know whether the Committee
25 considered the \$72 billion figure and the \$68

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1 N. PURCELL
2 billion figure to be relevant to the final
3 transaction that was closed on September 22?
4 MS. TAGGART: Object to form. I would
5 instruct -- instruct not to answer on
6 privilege as currently worded.
7 Q. Did the Committee know, as of the
8 closing of the sale transaction, whether the
9 final transaction involved the acquisition of
10 trading assets with a current estimated value of
11 \$72 billion?
12 MS. TAGGART: You can answer.
13 MR. SZYFER: Object to the form.
14 A. The Committee understood, or believed
15 we understood, certain aspects of the
16 transaction. Whether it was \$72 billion or not
17 at that point I don't recall.
18 Q. So you don't recall one way or the
19 other?
20 A. I don't recall whether \$72 billion was
21 the number used at that time. The numbers have
22 moved substantially throughout the case.
23 Q. What do you recall about how the
24 numbers moved substantially?
25 MS. TAGGART: Objection and a limited

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1 N. PURCELL
2 instruction on privilege. You can explain
3 your answer, just don't reveal any
4 communications. But if you want to explain
5 the facts known over time, to the extent you
6 understand the question, you should answer.
7 A. What numbers are you speaking of?
8 Q. Well, did you have an understanding
9 that, with respect to the trading assets that
10 Barclays would acquire, the numbers had moved
11 substantially from September 17 through the time
12 of closing on September 22?
13 MS. TAGGART: Object to form.
14 A. I believe -- and let me ask, when you
15 say "you," you mean the Committee, correct?
16 Q. You and the Committee.
17 A. I believe the Committee understood
18 that there was questions regarding the asset
19 value, the liability value, what was made up of
20 those various positions, and that the numbers
21 were being quoted differently at different times
22 leading up to the closing of the sale.
23 Q. Did the Committee understand that,
24 between September 17 and September 22, there had
25 been changes in the trading assets that Lehman

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1 N. PURCELL
2 had available to transfer to Barclays?
3 MS. TAGGART: Object to form.
4 A. Can you repeat the question?
5 (Record read.)
6 A. I would say the Committee understood
7 aspects of the sale were moving. Whether we
8 understood at the time details specifically as
9 to the trading assets or any other aspect of the
10 transaction, I would say no, we didn't.
11 Q. And despite that lack of
12 understanding, the Committee decided to abstain
13 or not object to the sale transaction; is that
14 correct?
15 MS. TAGGART: Object to form and
16 instruct not to answer on privilege.
17 Q. Did the Committee understand that the
18 figures that Lehman had presented earlier in the
19 week concerning trading assets available to
20 transfer to Barclays had changed by the time of
21 the Approval Hearing?
22 MS. TAGGART: Object to form, but you
23 can answer.
24 A. The Committee did not understand the
25 value of those assets, who determined the

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number, as you quoted, of those assets, and why, if in fact they did change, they did change.

Q. Did the Committee understand that Lehman had indicated that the value of the trading assets available to transfer to Barclays had changed in the period from September 16 to the time of the Approval Hearing on September 19?

MS. TAGGART: Object to form.

A. I do not recall at the time who was quoted as using the value of those assets.

Q. So you don't recall one way or the other whether, as of the Approval Hearing, the Committee understood that Lehman had indicated the value of the trading assets available to transfer to Barclays had changed?

MS. TAGGART: Object to form.

Q. Is that your testimony?

A. I don't recall whether the Committee understood it was Lehman quoting values for the assets or what was available for trading at that time.

Q. Do you recall whether the Committee understood that, between September 16 and

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ratio accretive without additional equity issuance. And the source of that accretion is the negative goodwill from the transaction, which amounts to about \$2 billion -- 2 billion U.S. dollars post tax." Do you see that?

A. I do.

Q. Before the Committee decided to abstain or not object to the sale transaction, was the Committee aware of this announcement by Barclays?

A. I see that Ed Gilbert sent this announcement by e-mail to the Committee members. I'm not sure if any Committee member read this prior to it, so therefore, I'm not sure whether we were aware of this announcement prior to the sale closing.

Q. Did any Committee member express any concern about the fact that Barclays had announced that it anticipated to realize a \$2 billion after-tax acquisition gain?

MS. TAGGART: I'm going to object and instruct you should only answer if there was some communication that was outside of counsel and the Committee deliberations it

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September 19, there was a change in the value of trading assets available to transfer to Barclays?

MS. TAGGART: Object to form.

A. The Committee wasn't formed on the 16th, so it couldn't have been for the 16th. If you mean between the 17th, when we were formed, and the 19th, during that period of time, again, the facts available to the Committee were minimal on the transaction. So I don't know if the Committee understood at that point specifically who was making the statement that these assets were available for transfer, whether it be Lehman or someone else.

Q. Staying with the same page of this Exhibit 476B, below the paragraph we just read, skipping the next paragraph, it states, "We also mentioned in our announcement," do you see that?

A. Yes, I do.

Q. "We also mentioned in our announcement today that certain of our shareholders have expressed support for the transaction and an interest in increasing their shareholdings in Barclays. In fact, the transaction is capital

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had with counsel and its professionals. But if there was some outside communication on that topic, you should testify about it.

A. Based upon that instruction, I do not believe there was any outside discussion outside of counsel on this issue.

THE VIDEOGRAPHER: The time is now 11:10 A.M. We are now off the record.
(Recess.)

THE VIDEOGRAPHER: This is the start of tape number 2. The time is now 11:22 A.M. We are now back on the record.

BY MR. STERN:

Q. Let me show you a document we previously marked as Exhibit 478B.

A. Mr. Stern, are we done with 476B?

Q. For the time being.

A. Okay.

MR. SZYFER: Do you have any additional copies, Mr. Stern?

MR. STERN: I'm sorry?
(Document handed to Mr. Szyfer.)

MR. SZYFER: Great. Thanks.

Q. Okay. If you would look at Exhibit

15 (Pages 54 to 57)

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<p>1 N. PURCELL</p> <p>2 of the transaction Barclays would step into the</p> <p>3 Fed's funding role.</p> <p>4 Q. And did the Committee understand that,</p> <p>5 in general, in such repos the value of the</p> <p>6 securities transferred would generally exceed</p> <p>7 the value of the cash provided for those</p> <p>8 securities?</p> <p>9 MS. TAGGART: Object to form.</p> <p>10 A. I don't believe I remember exactly</p> <p>11 whether the Committee understood that point.</p> <p>12 Q. What facts did the Committee have</p> <p>13 before the closing of the sale transaction</p> <p>14 concerning the market value of the securities</p> <p>15 transferred to Barclays in connection with that</p> <p>16 repo replacement?</p> <p>17 MS. TAGGART: Object to form.</p> <p>18 A. Again, I don't remember the specific</p> <p>19 facts.</p> <p>20 Q. Do you remember generally the facts?</p> <p>21 A. Can you repeat your question?</p> <p>22 Q. What facts did the Committee have</p> <p>23 before the closing concerning the market value</p> <p>24 of the securities transferred to Barclays under</p> <p>25 the repo?</p>	<p>1 N. PURCELL</p> <p>2 MS. TAGGART: Object to form.</p> <p>3 A. No.</p> <p>4 MR. STERN: I have no further</p> <p>5 questions.</p> <p>6 MS. TAGGART: I have no questions.</p> <p>7 Okay.</p> <p>8 MR. STERN: Off the record.</p> <p>9 THE VIDEOGRAPHER: That concludes the</p> <p>10 video record for today. The time is 11:51 A.M.</p> <p>11</p> <p>12 oOo</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>NOEL PURCELL</p> <p>Subscribed and sworn to</p> <p>before me this day</p> <p>of 2010.</p>
Page 75	Page 77
<p>1 N. PURCELL</p> <p>2 A. What general facts?</p> <p>3 Q. Yes.</p> <p>4 A. I believe the Committee understood</p> <p>5 that the transaction itself included the sale of</p> <p>6 some real estate, some securities, the transfer</p> <p>7 of certain individuals in return for</p> <p>8 liabilities. What those liabilities were I</p> <p>9 can't recall.</p> <p>10 Q. Did the Committee, as of the closing,</p> <p>11 have any certainty concerning the value of the</p> <p>12 assets Barclays was acquiring?</p> <p>13 A. No.</p> <p>14 Q. As of the closing, did the Committee</p> <p>15 have any certainty concerning the value of the</p> <p>16 consideration, including assumed liabilities,</p> <p>17 that Barclays was providing?</p> <p>18 (Continued on the next page to include</p> <p>19 the jurat.)</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 N. PURCELL</p> <p>2 CERTIFICATE</p> <p>3 STATE OF NEW YORK)</p> <p>4 : ss</p> <p>5 COUNTY OF NEW YORK)</p> <p>6 I, Kathy S. Klepfer, a Registered</p> <p>7 Merit Reporter and Notary Public within and</p> <p>8 for the State of New York, do hereby</p> <p>9 certify:</p> <p>10 That NOEL PURCELL, the witness whose</p> <p>11 deposition is herein before set forth, was</p> <p>12 duly sworn by me and that such deposition is</p> <p>13 a true record of the testimony given by such</p> <p>14 witness.</p> <p>15 I further certify that I am not</p> <p>16 related to any of the parties to this action</p> <p>17 by blood or marriage and that I am in no way</p> <p>18 interested in the outcome of this matter.</p> <p>19 I further certify that neither the</p> <p>20 deponent nor a party requested a review of</p> <p>21 the transcript pursuant to Federal Rule of</p> <p>22 Civil Procedure 30(e) before the deposition</p> <p>23 was completed.</p> <p>24 In witness whereof, I have hereunto</p> <p>25 set my hand this 13th day of January, 2010.</p>

1
2 BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK
4

-----X

5
In Re:

6 Chapter 11
7 LEHMAN BROTHERS Case No. 08-13555(JMP)
8 HOLDINGS, INC., et al., (Jointly Administered)
9

10 Debtors.
-----X

11
12
13 RULE 30(b)(6)
14 VIDEOTAPED DEPOSITION
15 OF
16 BARRY W. RIDINGS
17 New York, New York
18 Friday, January 15, 2010
19
20
21
22
23

Reported by:

24 ANNETTE ARLEQUIN, CCR, RPR
25 JOB NO. 27090

Page 6

1 Ridings
2 (Deposition Exhibit 561A, Document
3 Bates stamped LAZ-A-00004543 through 4549,
4 marked for identification, as of this
5 date.)
6 (Deposition Exhibit 562A, Email dated
7 9/18/08 from Creswell to Distribution at
8 Lazard NYC, Bates stamped LAZ-C-00049033 to
9 49041, marked for identification, as of
10 this date.)
11 (Deposition Exhibit 563A, Email dated
12 9/18/08 from Descoteaux to Ridings, Bates
13 stamped LAZ-C-00049400 through 49405,
14 marked for identification, as of this
15 date.)
16 (Deposition Exhibit 564A, Email dated
17 10/8/08 from Descoteaux to Ridings and
18 Whiting with attachment, Bates stamped
19 LAZ-C-00063724 through 63817, marked for
20 identification, as of this date.)
21 * * *
22 THE VIDEOGRAPHER: This is the start
23 of tape labeled No. 1 of the videotaped
24 deposition of Barry W. Ridings in the
25 matter In Re: Lehman Brothers Holdings
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1 Ridings
2 **your name and your position at Lazard?**
3 A. Barry Ridings, R-i-d-i-n-g-s.
4 I'm vice chairman of investment
5 banking at Lazard.
6 I'm a managing director of the firm
7 and I co-head our global restructuring group.
8 I'm also chairman of Lazard Capital
9 Markets, which is our securities business and I
10 am also chairman of Lazard Middle Markets, which
11 is our middle market M&A practice.
12 **Q. Let's begin with the week**
13 **September 15th through September 19th, 2008 if**
14 **we can.**
15 **And do you recall appearing in court**
16 **before Judge Peck with Harvey Miller and**
17 **Mr. McDade on the 19th at the sale approval**
18 **hearing?**
19 A. Yes.
20 **Q. Can you describe the engagement of**
21 **Lazard in the week preceding that hearing?**
22 A. Yes. On that Monday we got a phone
23 call from, I think it was Weil, Gotshal, asking
24 if we could come over for an hour or two, and I
25 arrived at Lehman's building kind of
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1 Ridings
2 Inc.
3 This deposition is being held at 575
4 Lexington Avenue, New York, New York on
5 January 15th, 2010 at approximately 9:12
6 a.m.
7 My name is Carlos Lopez from TSG
8 Reporting, Inc. and I am the legal video
9 specialist.
10 The court reporter is Annette
11 Arlequin in association with TSG Reporting.
12 Will the court reporter please swear
13 in the witness.
14 * * *
15 B A R R Y W. R I D I N G S, called as a
16 witness, having been duly sworn by a
17 Notary Public, was examined and testified
18 as follows:
19 EXAMINATION BY
20 MR. SCHILLER:
21 **Q. Good morning, Mr. Ridings.**
22 A. Good morning.
23 **Q. My name is Jonathan Schiller and I**
24 **represent Barclays in this matter.**
25 **Would you please state for the record**
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Page 9

1 Ridings
2 mid-afternoon and I don't think I left Lehman's
3 building for about 48 hours. It turned out to
4 be longer than an hour or two.
5 And what we were asked to do is to
6 get re-engaged by Lehman, now in bankruptcy, to
7 act as their financial advisor. That's a broad
8 description of our assignment.
9 **Q. Thank you.**
10 **During the course of that period**
11 **September 15th through September 19th, did you**
12 **reach a view whether there was a realistic**
13 **opportunity to sell the Lehman North American**
14 **business to any entity other than the Barclays?**
15 **MR. DAKIS: Objection to form.**
16 **MR. CARDEN: Objection.**
17 A. Again, to put things in context, that
18 was, and again, I've been doing this for
19 35 years, we were in unprecedented times and the
20 fact that an entity like Lehman Brothers could
21 actually file bankruptcy was unbelievable.
22 At the same point you had Bear
23 Stearns having just melted and been sold to
24 JPMorgan.
25 You had the problems at AIG and you
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also had problems at Merrill Lynch, Morgan Stanley, Goldman Sachs, and the securities markets were probably in the worst condition ever that one could imagine.

And so there had been efforts made before the bankruptcy to do a transaction with a number of parties. None of those came to fruition. Lehman files bankruptcy. They're reapproached by Barclays to do a transaction.

In my mind I don't think there was an alternative transaction available that could have been done on any timely basis and the passage of time was so critical given the pressures on the market that this was not a situation where you could take months or even weeks to do a transaction.

Q. Let me just try to understand the last part of what you said.

By September 19th, 2008, had you concluded that there was no alternative transaction to the proposed sale to Barclays?

MR. CARDEN: Objection to form.

MR. DAKIS: Same objection.

A. That's correct.

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Q. By September 19th, 2008, did you have a view if the sale were not approved by Judge Peck pursuant to Weil, Gotshal's motion that the liquidation of the Lehman North American business would pose enormous risks?

MR. CARDEN: To whom?

Objection.

MR. DAKIS: Same objection.

MR. SCHILLER: Let me rephrase that.

BY MR. SCHILLER:

Q. If there were no sale approved to Barclays on September 9th, did you have a view whether there would be the risk of enormous loss to Lehman?

A. That is my view, and more so if this transaction didn't happen, I think the repercussions in the financial market would have been catastrophic to a number of other financial institutions.

So the reverberation of a Lehman liquidation would have had a major negative impact on the U.S. capital markets.

Q. You had past experience with Drexel Burnham and the failure of that investment bank;

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is that correct?

A. Unfortunately, yes, I was a managing director at Drexel when it also went bankrupt.

Q. And did your experience there help inform the views that you held on September 19th as you've just described?

A. Yes.

Q. Was it possible to calculate the potential losses to Lehman of a liquidation as of September 19th with any certainty?

A. I don't think you could have done it with certainty because you would have been making assumptions.

But in a financial meltdown of this magnitude, the prices of securities would have dropped by enormous amounts.

Q. And it was your view on September 9th that a sale to Barclays was superior to any liquidation by Lehman?

MR. DAKIS: Object to the form.

A. Yes.

Q. Since September 19th, have you learned anything that would cause you to change that conclusion?

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A. No. I believe today that there was no other alternative; that that was the best alternative at the time.

Q. Let me ask you to look at the Asset Purchase Agreement, which is Exhibit 1 in this proceeding, and I'm not going to ask you to review it, I just want you to have it in mind.

You've seen the APA before, have you not?

A. Yes.

Q. Did the APA provide for the purchase of a business and its employees?

MR. CARDEN: Objection.

MR. DAKIS: Same objection.

MR. ROTHMAN: Same objection.

A. In -- the Asset Purchase Agreement provides whatever it says it provides for. In my mind, Barclays did buy a business and it was described in the Asset Purchase Agreement.

Q. Was the sale to Barclays a precise exchange of equal values of assets and liabilities?

MR. DAKIS: Objection to form.

A. It was not a precise exchange.

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Again, Barclays, in my mind, bought a business and they paid certain cash, they assumed certain liabilities and that's the value that they paid the estate, and for that they got certain assets and they got certain fixed assets and intangible assets and people.

Q. Let me ask you to look at the second exhibit that I've placed in front of you, Exhibit 25 in this proceeding, which is a clarification letter between Lehman and Barclays.

Do you see that?

A. Yes.

Q. When you were in court on September 19th, at the time of your proffer to Judge Peck, did you understand that the sale documentation that Judge Peck was being asked to approve included a Clarification Agreement that was to be completed between the parties?

A. I believe that's correct.

Q. Let me ask you to look at the first page of the Clarification Agreement, Exhibit 25, and direct your attention to paragraph 1 (ii) under "Purchased Assets."

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Do you see that?

A. Yes.

Q. And in that paragraph which addresses the definition of purchased assets, the parties identify assets that are going to be transferred to Barclays, including, as you see under letter A, the securities that are subject to the Barclays Repurchase Agreement.

Do you see that?

A. Yes.

Q. And under paragraph B, Barclays is to receive such securities and other assets held in LBI's clearance boxes at the time of the closing.

Do you see that?

A. Yes.

Q. And if I may ask you just to turn the page and to note paragraph C which provides a transfer to Barclays of exchange-traded derivatives and any property that may be held to secure obligations under such derivatives and collateralized short-term agreements.

Do you see that?

A. Yes.

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Q. Do you also see that there are no values given for these purchased assets in the Clarification Agreement?

A. That's correct.

Q. The sale to Barclays was the purchase of a business and the assets that went with the business to the extent they were not excluded, irrespective of what their value was, correct?

MR. DAKIS: Objection to form.

MR. CARDEN: Objection to form.

MR. ROTHMAN: Objection.

A. Again, my understanding is that Barclays bought a business and in buying that business they paid a certain amount of cash and assumed certain liabilities, and for that they got the assets in that business.

So I'm not sure if I answered your question, but that is my understanding of the transaction.

Q. And values, specific values associated with those assets, whether estimated or otherwise, were not provided for in the APA or the clarification letter, correct?

MR. CARDEN: Objection to form.

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MR. DAKIS: Same objection.

MR. ROTHMAN: Same objection.

A. That's correct.

Q. Was this deal structured to be a precise wash, Mr. Ridings?

MR. CARDEN: Objection to form.

MR. DAKIS: Objection.

A. I do not think it was structured that way.

Q. Do you know whether there was disagreement between Barclays and Lehman over the actual values of assets or liabilities involved in the transaction?

MR. CARDEN: Objection to form.

MR. DAKIS: Same objection.

MR. ROTHMAN: Join in the objection.

A. Yes.

Q. What was your understanding generally of such disagreement?

A. My understanding is that, to put it in context, we had a tumultuous week where the market was extremely volatile and generally on a down trend, and that throughout that week Barclays had made the point that Lehman's marks

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were not market or stale and that there was a disagreement as to what the market value of those securities actually were.

Q. To your knowledge, was there uncertainty that week over the values of the assets or liabilities that were involved in the transaction?

MR. CARDEN: Objection to form.

MR. DAKIS: Same objection.

A. Absolutely.

Q. Do you recall that the agreement between the parties provided for no representations or warranties concerning the values of the assets and the liabilities in the transaction?

A. I think that's generally correct.

Q. Was it also your understanding that the purchase agreement, Exhibit 1 before you, contained, as of September 19th, contained no true-up or profit sharing mechanism?

A. In this document, in the APA that was signed, that's correct.

Q. And as a result of that, is it fair to say that the parties provided no contractual

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mechanism to make sure that the assets and the liabilities involved in the transaction ultimately matched?

MR. CARDEN: Objection to form.

MR. DAKIS: Objection to form.

MR. ROTHMAN: Same objection.

A. I don't think it was part of the transaction that there was to be a match.

Q. Thank you.

Let me ask you to turn to the next exhibit that we placed before you, 561A.

A. Yes.

Q. 561A are six pages of documents, various schedules and time lines produced from Lazard's records, Mr. Ridings, and let me ask you to look first at the first page of the exhibit, page 4543.

Do you see the part of this schedule referred to as "Assets"?

A. Yes.

Q. And do you see the date on the top right corner of 9/18/08?

A. Yes.

Q. Do you know who wrote that date there

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by any chance?

A. Yes.

Q. Who did?

A. I did.

Q. All right. Does this reflect that you received this schedule on 9/18?

A. Yes.

Q. If you look at the assets listed there on the left side of the schedule, it provides for none of the intangible assets associated with the business sold to Barclays, does it?

A. No.

Q. If you compare the totals for those assets on page 4543 to the next page, 4544, which is dated 9/16/08 at the top on the right side.

Do you see that?

A. Yes.

Q. You see there is a change in the estimate of the assets from \$62.7 billion on the 9/18 balance sheet to \$57.9 billion on the September 18th draft balance sheet, correct?

MR. CARDEN: Objection to form.

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MR. DAKIS: Same objection.

A. Yes.

Q. Does this change reflect the downward values that you were referring to earlier in your testimony?

MR. CARDEN: Objection to form.

MR. DAKIS: Join in the objection.

A. Just to be clear, the second page, 544, again, there's a date on the upper right corner, but it appears to be set up roughly similar to the first page that had my notes on it.

There's one or two very slight variations and obviously there are no headers and it has a different date on it, and I believe that SB is Steve Berkenfield's initials.

Q. Right.

A. But again, you can get the same point that you're making on the first page, that in those couple of days there was dramatic decreases in the price of securities.

Q. Turning again to what is not on page 4543 under "Assets," I asked you whether there were intangible assets associated with the

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business that was being sold to Barclays that are not reflected there and I believe you said that is correct.

A. Yes.

Q. And to explore that briefly, there's no reflection of purchased fixtures, fittings or software listed among the assets there, correct?

A. That's correct.

Q. There are no transferred properties leases listed there; isn't that right?

A. Correct. There are no fixed assets either.

Q. There are no fixed assets either.

A bit later on I'm going to take you to a larger balance sheet and return to this subject.

On the question of a wash, which I mentioned a few minutes ago, did Lazard proffer to the court at any time that this transaction was to be a wash?

A. No.

Q. Did you in fact believe on September 19th that this transaction was going to be a wash?

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A. Again, just to be clear what you mean by wash, because that's not a term I've been using, but that everything sold equals everything purchased.

Q. That's right.

A. No.

Q. Let me ask you to turn to the next exhibit, I'm going to hold this one off because we're going to return to this, which is 562A, a six-page set of news articles distributed in Lazard on September 18, 2008.

Do you see that?

A. Yes.

Q. And I'm just going to ask you about the last page.

A. The very last page?

Q. The very last page of that exhibit, which is part of a Reuters report.

You will see that by turning the page before just to understand the context of what I'm going to ask you to look at.

And this is a report on the impending sale. The second full paragraph on the last page of 5628 says, "The deal would also lift

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Barclays' capital ratio even before the bank completes a planned capital injection alongside the deal because of a negative goodwill adjustment from the deal amounting to about \$2 billion after tax."

Do you see that?

A. Yes.

Q. Does Barclays' statement on September 17th as reported here by Reuters that it expected to record a multibillion dollar acquisition gain on the transaction, is that statement inconsistent in any way with your proffer in testimony to the court on September 19th?

MR. CARDEN: Objection to form.

MR. DAKIS: Same objection.

MR. ROTHMAN: Join in the objection.

A. Again, my proffer didn't speak to how Barclays is going to account for a transaction and I don't know how Barclays accounted for the transaction.

But my proffer was that this was the highest and best alternative that we had. In fact the only alternative that we had.

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Q. As the Reuters article reports, Barclays made an announcement of this gain, anticipated gain, two days before the hearing.

Is that a surprise to you that Barclays anticipated a gain on this acquisition?

MR. DAKIS: Objection to the form.

BY MR. SCHILLER:

Q. As of September 19th.

MR. CARDEN: Objection to form.

MR. DAKIS: Objection.

MR. ROTHMAN: Objection.

A. It's not a surprise to me, but it's Barclays' accounting, so again, I'm not going to put a lot of relevance on the U.K. accounting for this.

Q. To your knowledge, there was no limitation on whether Barclays could profit from this trade, correct?

MR. CARDEN: Objection to form.

MR. DAKIS: Same objection.

MR. ROTHMAN: Join in the objection.

A. That's correct.

Just to be clear, if Barclays lost money on this transaction, it would have been

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the end of the U.S. capital markets.

Q. Let me ask you to turn to the next exhibit, 377A, which is Barclays' disclosed acquisition gain on this transaction. The document was generated in February of 2009.

If you look at page 5844, you see the valuation by Barclays of the financial assets that it had purchased on September 22nd amounting to \$50 billion?

A. Yes.

Q. 160?

And it goes on below that to list some of the other assets, some of which we discussed earlier; intangibles, real estate, fixtures, fittings and software.

Do you see that?

A. Yes.

Q. And that leaves a total of \$53,540,000,000 of assets acquired in the transaction, correct?

A. Yes.

Q. And then if you return to the first page of Exhibit 377A and you address line 39, the gain on acquisition, you see that Barclays

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recognized a gain of approximately \$4.2 billion on the acquisition, correct?

A. Yes.

Q. And is the gain that was recognized as reported here inconsistent in any way with your understanding of the sale on which you proffered testimony on September 19, 2008?

MR. CARDEN: Objection.

MR. DAKIS: Objection.

MR. ROTHMAN: Objection to the form.

A. I don't think it's inconsistent.

It's just something different, the way Barclays accounts for this.

Q. Are you generally familiar with the Rule 60 motion that was filed by Lehman in this proceeding?

A. In a very high-level fashion, yes.

Q. And in terms of your high-level review of the motion, you understand that it was not filed by Weil, Gotshal, correct?

A. That's right.

Q. Based on everything that you know as of today, do you believe your proffer in testimony to the court on September 19th was

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accurate and fair and appropriate?

A. I do.

Q. During the week of September 19, 2008, did you have an understanding whether Barclays and Lehman were engaged in discussions concerning Lehman's marks?

A. They were.

Q. And did Lehman exercise diligence regarding that process?

MR. CARDEN: Objection to form.

MR. DAKIS: Same objection.

A. Can you clarify the question, please?

Q. You were familiar with discussions between Barclays and Lehman concerning Lehman's marks.

A. Yes.

Q. And did your diligence address those discussions in any way?

MR. CARDEN: His diligence?

MR. SCHILLER: Lazard's diligence.

MR. CARDEN: Objection to form.

MR. DAKIS: Same objection.

BY MR. SCHILLER:

Q. Did Lazard exercise a level of

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diligence in reaching its opinions as to why this transaction should be approved by the court?

MR. CARDEN: Objection to form.

MR. DAKIS: Same objection.

A. We did due diligence during the week and that supported our conclusions at court.

Q. And in the course of doing that diligence, did you become aware of the process in which Barclays and Lehman were engaged concerning Lehman's marks?

MR. CARDEN: Objection to form.

MR. DAKIS: Same objection.

A. Again, it was my understanding that throughout the week Barclays had said that the marks were not appropriate; that they were too high because they were no longer market or stale.

I nor anyone on my team were in any meetings where people were talking about specific securities and what the marks should be.

Q. In the proffer of your testimony on September 19th, Mr. Miller said that you would

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testify that the parties exchanged numerous bids and asks and turn countless drafts.

Do you recall that?

A. Yes.

Q. In terms of exchanging numerous bids and asks, does that include this process of discussing Lehman's marks?

MR. CARDEN: Objection to form.

A. It included everything that was being discussed.

Q. And including the exchange between the parties concerning Lehman's marks.

A. My understanding is that there was significant discussions on what the appropriate marks for various securities were.

Q. Let me ask you to look at the next exhibit I've put before you, 563A, which is an email from Mr. Descoteaux to you on September 18, 2008 transmitting prior email, including an email from Gerard Reilly dated September 17, 2008 regarding diligence items.

Do you see that?

A. Yes.

Q. Would you identify Mr. Descoteaux,

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please?

A. David is a managing director in the restructuring group at Lazard and worked with me and for me on this transaction.

Q. And would you identify Mr. Bruhmuller as well.

A. Arthur is -- I believe Arthur is either a VP or director at Lazard.

Q. Mr. Miller advised Judge Peck that you, sir, were intimately involved in the negotiations between Barclays and Lehman that week of September 15th, correct?

A. Yes, although I was not in every single meeting because there literally were multiple meetings going on at the same time.

Q. Who was negotiating with Barclays on behalf of Lehman, to your knowledge, during that period?

MR. ROTHMAN: Objection to form.

MR. DAKIS: Same objection.

A. My recollection is that Mark Schaeffer, Bart McDade, and that's my direct knowledge. I'm sure there were other people that were involved.

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Q. Did you learn that week who Gerard Reilly was by any chance?

A. No, I do not know who he is.

Q. As far as you know, did you participate in any meetings with Gerard Reilly?

A. I don't think so.

Q. Mr. Reilly writes to Mr. Kelly on September 17th, page 49402 of Exhibit 563A, Mr. Ridings.

A. I'm not sure I know who Martin Kelly is either.

I do know Dan Flores.

Q. Can you identify Mr. Flores for the record, please?

A. I don't know his exact title, but he worked at Lehman Brothers.

Q. All right. Reilly's email to these gentlemen says, "The first question is very difficult. My understanding of the deal is that they will purchase our assets that remain in LBI on the closing date, which will not be the same as the assets on the 12th. That purchase will be at a fixed discount on the assets that remain to reflect the bulk side of the purchase. We

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can track our PL by assets category which gives some indication of how much we have moved the marks. We can also provide assets as of the 16th with marks so they can get some prospective. Let me know what we need."

Do you see that?

A. Yes.

Q. That then is sent to Mr. Flores, as we've noted, and he sends it on to your colleague, Mr. Bruhmuller, who is asked, "What are your thoughts on this?"

Do you see that?

A. Yes.

Q. And then Mr. Bruhmuller writes, "We are trying to get a sense for how marks have evolved since Friday. I think the first priority would be to see the inventory of what's being sold, how the marks have evolved and info on the buyer discount."

Would a discount as set forth in this exhibit change in any way your support for this transaction on September 19th?

MR. CARDEN: Objection to form.

MR. DAKIS: Same objection.

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A. My understanding was that there was not a built-in discount, but given the fact that we did not have a viable alternative, this -- the rationale he sets is a reasonable rationale; that one would get a discount for a bulk purchase, but that was not my understanding of what the deal was.

Q. If there had been a bulk purchase as you understand that expression, would that have concerned you in any way as of September 19th, 2008?

MR. CARDEN: Objection.

MR. ROTHMAN: Objection to form.

MR. DAKIS: Same objection.

A. Could you just clarify what you mean by "concern"?

Q. Would it have changed in any way your proffer to the court on September 19th?

MR. ROTHMAN: Same objection.

MR. CARDEN: Same objection.

MR. DAKIS: Same objection.

A. I don't think so. If you're telling me someone wants a 90 percent discount, yes, that doesn't make a lot of sense to me.

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If you're telling me someone wants a five or ten percent discount, that's not going to change my proffer to the court in terms of we still have the highest and best alternative and it's better than liquidation.

Q. So if Lazard provided Barclays with a five percent or a ten percent discount in the transaction before the court on September 19th, that would not have changed your proffer to the court in favor of the sale.

MR. DAKIS: Objection to form.

MR. RAFFERTY: Jonathan, you mean if Lehman had provided? You said if Barclays --

MR. SCHILLER: Let me rephrase the question.

BY MR. SCHILLER:

Q. If Barclays received a five or ten percent discount off of Lehman's marks at the time, that would not have changed your recommendation to the court to approve the sale, correct?

MR. CARDEN: Objection.

MR. ROTHMAN: Objection.

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MR. DAKIS: Join.

A. Just a couple of comments. To answer your question, you need to put it in context of the week that we're in, the markets are extraordinarily volatile, things are changing literally by the minute and generally things were trending down, not up.

There was continued disagreement between Barclays and Lehman as to what the appropriate marks were and if you're saying a five or ten percent discount off of the Lehman marks, which is what Barclays had always said, they didn't use percentages but they said your marks are stale and they're not reflective of what's happening in the market, the order of magnitude that you've just discussed with me, that would not change my opinion that this was better than liquidation and it's the highest and best and only alternative we had.

Q. What order of magnitude would have affected you?

MR. CARDEN: Objection to form.

MR. DAKIS: Same objection.

MR. ROTHMAN: Join in the objection.

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A. Let me try and describe it this way: What these securities were, some of them, were very illiquid securities, so if we go to some financial literature, for example, like Shannon Pratt, who's a well-known author who writes about valuing securities and illiquidity discounts, what he writes is that illiquidity discounts on securities, and that means securities that cannot readily be sold, averages 35 to 40 percent.

Now again, everything is fact specific but what you and I just discussed isn't close to -- I don't think it's close to 35 or 40 percent, sort of illiquidity discount.

Q. Did you have any understanding during this period September 15th to September 19th that any discount as discussed in the Reilly email was a secret that Lehman was to not share with anybody?

MR. CARDEN: Objection to form.

MR. ROTHMAN: Same objection.

MR. DAKIS: Join in the objection.

A. I'm sorry. Can you rephrase that?

Q. Sure.

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A. The objections... I lost track.

Q. The Reilly email which goes to Arthur and then to Descoteaux refers to a discount of some sort, does it not?

A. I think it says a bulk market discount.

Q. Did Lazard have any understanding that such a discount was a secret not to be shared outside of Lazard?

MR. CARDEN: Objection to form.

MR. DAKIS: Same objection.

A. I have no knowledge of that.

Q. At any point that week in the negotiations between Barclays and Lehman in which you participated, were there closed or secret discussions of any kind as far as you could tell?

MR. CARDEN: Objection to form.

MR. DAKIS: Same objection.

A. There were no secret discussions. By closed, the door was closed. I'm not sure what you mean by closed.

Q. Well, I think you've answered my question.

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A. I mean things that were discussed in the meetings, I reported back to the parties at Lehman and if appropriate, counsel.

And generally I'm trying to think of a meeting that I was at where there was not a Lehman person with me and none -- the week kind of runs together, but I actually can't think of any meetings that I was in a room with Barclays without a Lehman person with me.

Q. So as far as you recall, there was nothing secret about Barclays' assertion that the Lehman marks were stale and too high.

MR. DAKIS: Objection to form.

Mischaracterizes his testimony.

A. They said that all the time. There's nothing secret about that.

Q. Let me ask you to look at the next exhibit, Exhibit 20, which is a Lehman email dated September 16th from Mr. Tonucci to Mr. Lowitt.

Do you see that?

A. Yes.

Q. And in this email chain below is an email from Mr. Kelly to Lowitt early in the

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morning of September 16th --

A. Yes.

Q. -- saying, "Well, it took all night and lots of back and forth, but the deal was done and ready for the board. Final price did not change meaningfully. Approximately a \$5 billion all-in economic loss versus our marks and \$3.6 billion of residential assets left behind."

Do you see that?

A. Yes.

Q. Do you have an understanding whether the "\$5 billion all-in economic loss versus our marks" refers to the difference between what Barclays thought the assets were worth versus the Lehman marks?

MR. CARDEN: Objection to form.

MR. DAKIS: Objection to form.

MR. ROTHMAN: Objection to form.

A. I believe that's true, but again, I didn't write this and I'm not familiar with it.

Q. Is this document and what it purports consistent with your understandings of the discussions between the parties that week?

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MR. CARDEN: Objection to form.

MR. DAKIS: Objection to form.

MR. ROTHMAN: Objection to form.

A. It's not inconsistent. The discussion that week are the market was falling rapidly and the marks were not current and they were stale.

But again, my understanding of the transaction is they were buying a business and in buying a business, they got assets and liabilities.

Q. Is there anything inconsistent in this exhibit with your proffer in testimony before the court on September 19th in support of the sale?

MR. ROTHMAN: Objection to the form.

MR. CARDEN: Objection to the form.

MR. DAKIS: Objection to the form.

A. I don't think so.

Q. Let me ask you to look at the next exhibit, Exhibit 21, sir, which is another internal email, this one dated September 18, 2008 from Mr. Kirk to Mr. Reilly in response to a previous email from Reilly that is also set

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forth on page 9627.

Do you see that?

A. Yes.

Q. And in Mr. Reilly's email that begins this particular chain on this page, there is a reference to "open issues on the deal" and he writes, "I need some help resolving these issues."

And then at paragraph 3 Mr. Reilly wrote, "Not clear on the amount of block discount or how we make it happen. Defaulting on repo could be the best as discount could be taken from haircut. If not, then we need to give business an allocation of block discount so they can mark down the books tonight. Does that create a problem as it could tip the broker early? Would we rather have that be in the sale price tomorrow?"

Do you see that?

A. Yes.

Q. Is there anything in Exhibit 21 that is inconsistent with your support for the sale on September 19, 2008?

MR. CARDEN: Objection to the form.

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MR. DAKIS: Objection to the form.

MR. ROTHMAN: Objection to the form.

A. There are things in here I actually don't understand. This is not a document I'm familiar with, but I don't understand what he says could create a problem as it could tip the broker early. I just don't know what that means.

And again, my understanding is that this is essentially what we talked about. I don't recall negotiations where people said I want a block bulk sale discount.

But there's nothing here with those provisos that would cause my testimony to the court to be different. This was the only alternative we had. It is better than liquidation.

Q. By September 19, 2008, did you determine that the transaction which had first taken form on September 16th and 17 had been completely restructured?

A. Yes.

Q. Can you describe that restructuring generally?

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A. My understanding is that, and again, this is top level, that Lehman had gone to the Fed and pled certain securities and the Fed had lent Lehman money, and the Fed said, for whatever reasons, they said, This is not going to work for us, Barclays. We essentially need you to step into our shoes." So Barclays stepped into the shoes of the Fed.

And so the securities that were originally going to go to Barclays and the original deal Lehman didn't have anymore, so Barclays stepped into the shoes of the Fed and the transaction was restructured around that.

Q. You mentioned securities that Lehman did not have anymore.

Could you describe what you meant by that?

A. Again, my general understanding, that again, Lehman had to fund its business every day. If it didn't have funding, it would have to liquidate. And in order to get funding, they would pledge securities with the Fed and they would get overnight loans against that. And without the liquidity, they couldn't open for

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business and we would have been in liquidation.

For whatever reason the Fed at some point said, "This doesn't work for me where I'm your bank, Barclays. If you're going to buy this company, you're going to buy me out of my position right now."

Again, this is generalization. I'm sure there's a lot of legal specifics that I'm glossing over.

Q. At that time of the discussions concerning the Fed repo, do you know whether counterparties had been seizing Lehman securities that week?

A. My understanding is they had been. The one that comes to mind is the commodity exchange, but that's all I recall actually.

Q. So were there Lehman securities that had been available to Barclays on September 16th or 17th that were no longer available to Lehman by the 18th and the 19th?

A. I think that's correct.

Q. Let me ask you to go back to Exhibit 561A, which is a series of schedules and balance sheets that I went over with you

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earlier, and ask that you turn to the second to the last page, 4548, which has the word "Timeline" at the top.

Do you see that?

A. Yes.

Q. Do you know who prepared this document?

A. I don't know who prepared it. I do know that it's not a Lazard template so we did not prepare it.

Q. Did you understand that there was a Fed -- that there was a haircut in the Fed repo of approximately \$4.7 billion?

A. I wouldn't characterize it that way.

I would characterize it that when people go to the Fed to borrow money, the Fed does not lend you dollar for dollar. They're going to lend you less than the collateral that you give them.

Q. And did you understand that the difference between what the Fed was loaning and the collateral it was pledged was approximately \$4.7 billion?

A. I don't know the specifics, but I

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that's order of magnitude correct.

Q. And did you also understand that when Barclays stood in the shoes of Fed with respect to the repo, the ratio of the loan to the pledged collateral was consistent with that Fed ratio?

MR. CARDEN: Objection to form.

MR. DAKIS: Same objection.

A. I'm not sure I know the answer to that question.

Q. If you look at the exhibit I've placed in front of you where it provides under "Thursday," a reference to the "the Fed facility" and it's written, "Barclays wires \$45 billion in cash to JPMorgan, expects to receive \$49.6 billion in securities," do you understand that to be a reference to the Fed repo we've been discussing in which Barclays stood in the Fed's shoes?

A. I think that's correct.

Q. I've seen an email in which you mentioned that during the day on Thursday you were talking to creditors, you were in a meeting with creditors.

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Do you recall meeting with creditors on Thursday?

MR. CARDEN: Objection to form.

MR. DAKIS: Same objection.

A. My recollection is that we had a meeting at Weil, Gotshal on Thursday with some of the creditors.

Q. Was there a discussion of this substantial change in the transaction in terms of the role of the Fed repo?

A. I actually don't recall specifically. I would have thought it would have been discussed, but I don't recall.

Q. Before Judge Peck, Harvey Miller proffered your testimony and when he did, he offered to the court your testimony that the negotiations between Lehman and Barclays that week were, quote, arm's length, difficult and aggressively negotiated by the parties.

Was that accurate?

A. Yes.

Q. Mr. Miller also proffered as your testimony that the sales agreement between Lehman and Barclays that was before the court

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was, quote, the result of good faith negotiations.

Did you believe that at the time?

A. Yes.

Q. Based on everything that you know today, was this proffer of your testimony to the court on September 19th fair and accurate?

A. I'm struggling with fair.

It certainly was accurate and I attempted to be accurate, and I believe today I was accurate.

Q. Have you become aware of anything since that hearing that has led you to believe that the information you received from Lehman was inaccurate in any way?

A. I do not believe that Lehman gave me inaccurate information. They -- in an unbelievable stressful period, they gave us whatever information they had. Remember, things were changing by the second.

Q. Do you have any reason to believe that those at Lehman who were dealing with Barclays that week were not acting in good faith?

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A. I have no reason to believe that to be the case.

Q. Let me include in that question Mr. McDade, Mr. Tonucci, Mr. Kirk and Mr. Lowitt.

Do you have any reason to believe any of them did not act in good faith in their dealings with Barclays leading up to September 19th?

A. I think they all acted in good faith. I feel very comfortable in making that statement with respect to Bart, since I got to know him so well.

And I would say for Ian, he's an officer of a company. He had fiduciary duties that he has.

I believe it to be the case for the other two, although I had only met them one or two times.

Q. Do you recall whether the contractual documentation between the parties required as a closing condition that a number of officers of Lehman go to Barclays?

A. Yes.

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Q. The individuals I've just named, McDade, Tonucci, Kirk, Lowitt, were they included in that conditions?

MR. CARDEN: Objection to form.

MR. DAKIS: Objection to form.

A. I'm not sure about Kirk.

Certainly the other three.

Q. You may have answered this already but I want to be clear.

Did you have an understanding from your interactions with these gentlemen that they knew they had a fiduciary duty to Lehman that week?

A. I had no discussion on that point with Kirk or Tonucci, or Lowitt for that case, but Lowitt is an officer. I mean he has a fiduciary duty.

With respect to Bart, I think it was clear that Bart knew he had to be the honest broker.

Q. As a general matter, was it your understanding that week that Lehman's financial inventory was uncertain and changing constantly?

MR. CARDEN: Objection to form.

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A. I'm going to ask you to clarify "uncertain."

Q. Let me ask only about the value of the Lehman inventory. You've talked previously about the downward pressures, the tumultuous market conditions.

Let me ask you whether you understood that the value of Lazard's financial inventory was uncertain.

A. Of Lehman.

Q. Lehman's financial inventory.

A. We have no financial inventory.

Q. Let me start again.

During that week of September 15th through September 19th, was it your view that the value of Lehman's financial inventory was uncertain and changing constantly?

MR. CARDEN: Objection to form.

MR. DAKIS: Objection.

MR. ROTHMAN: Objection to form.

A. It was certainly changing constantly, you know, by the hour and the markets were under incredible stress and the general trend of that during the week was downward.

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Q. In your proffer to Judge Peck, you are quoted as stating, "The sale of LBI must be immediately consummated or there will be little or nothing left to sell."

Is that accurate?

A. I think that's what he said, yes. I think he said about what I would say, yes.

Q. And you agree with that proffer.

A. Yes.

Q. Let me ask you a couple more questions about Exhibit 561A, which I have -- which you have before you.

I'm going to ask you to turn to page 4545, which is another balance sheet.

When you were in court with Mr. Miller on September 19th, do you recall his statement to Judge Peck that there would be "\$2 billion of exposure to transfer employees" for Barclays?

A. I think that's generally correct.

Q. And as regards cure payments, do you recall that Mr. Miller said to the court that there was \$1.2 billion potential exposure to Barclays for contracts and leases that Barclays

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may assume?

MR. CARDEN: Objection to the form.

MR. DAKIS: Objection to the form.

MR. ROTHMAN: Objection to the form.

A. I think that's what he said, yes.

Q. Did you have an understanding that these were rough Lehman estimates that Mr. Miller was describing?

MR. CARDEN: Objection to form.

MR. DAKIS: Same objection.

MR. ROTHMAN: Objection.

A. Yes. I don't think there was any specific number for all the employees. The year hadn't been finished yet, so that was an estimate of what -- it was an upward estimate. If they were going to keep the employees, they were going to have to pay them to keep them.

The other one, my understanding is it was an estimate and actually the number had started out higher and had come down. It was an estimate.

Q. And in terms of a compensation, would those payments be contingent upon how many people actually transferred to Barclays?

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MR. CARDEN: Objection to form.

MR. ROTHMAN: Same objection.

MR. DAKIS: Same objection.

A. That's certainly one of the factors, yes, and you can't force people to work for Barclays.

Q. So at the page I mentioned earlier, 4545 of 561A, on the left side of the balance sheet there are accrued amounts for payables, including compensation and trade liabilities.

Do you see that?

A. Yes.

Q. And those accruals there as adjusted are less than the numbers that Mr. Miller gave the court Friday night, correct?

MR. CARDEN: Objection to form.

A. Correct.

Q. Is there any information on page 4545 that is inconsistent with your proffer in testimony in support of the sale on September 19th?

MR. CARDEN: The whole page? Objection to form.

MR. DAKIS: Same objection.

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A. Well, with respect to those two line items we've been talking about, it does not change my proffer.

We'd have to talk about the other line items otherwise.

MR. SCHILLER: Okay. Why don't we take a short break and I'll just have a little bit more.

THE VIDEOGRAPHER: The time is 10:16 a.m. We're going off the record.

(Recess is taken.)

THE VIDEOGRAPHER: The time is 10:39 a.m. We're back on the record, video No. 2.

BY MR. SCHILLER:

Q. Mr. Ridings, let me ask you to look at the last exhibit that I've put in your pile, 564A.

A. Yes.

Q. And this is a Lazard -- an Alvarez & Marsal presentation to the Creditors Committee that was sent to David Descoteaux and copy to you on October 8, 2008, correct?

A. Yes.

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MR. CARDEN: Objection to the form.

MR. DAKIS: Same objection.

BY MR. SCHILLER:

Q. And may I ask you to turn to the next to last page, 63753, please, where Alvarez & Marsal make reference to the, quote, sale of Lehman Brothers to Barclays.

Do you see that?

A. Let me make sure we're on the same page. That was kind of the middle of my deck, so it's page 28 on the bottom left?

Q. Yes, sir.

A. Okay. Thank you.

Q. You made mention earlier in your testimony to Lehman stale marks.

Do you recall that?

A. Yes.

Q. Let me point you to the first bullet under "Assets Purchased," which reads, "43.1 billion Repo Assets. Book value per Lehman stale marks; negotiated a \$5. billion reduction."

Do you see that?

A. Yes.

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Ridings

1
2 **Q. If this \$5 billion reduction is what**
3 **Mr. Reilly meant in his email that we've looked**
4 **at concerning bulk discount or block discount,**
5 **then this was information known to Lazard,**
6 **correct?**

7 MR. CARDEN: Objection.

8 MR. DAKIS: Objection to form.

9 MR. ROTHMAN: Objection.

10 A. Can you restate that, please.

11 **Q. Sure.**

12 **We looked at Mr. Reilly's email that**
13 **Mr. Descoteaux and Arthur received.**

14 A. Yes.

15 **Q. And he made reference to a bulk**
16 **discount there.**

17 **Do you recall that?**

18 A. He had a reference to, yes.

19 **Q. And you've also testified to Lazard's**
20 **knowledge of the negotiation between Barclays**
21 **and Lehman over Lehman's stale marks, correct?**

22 A. Yes.

23 **Q. And if the reference by Reilly to a**
24 **discount was a reference to a negotiated**
25 **\$5 billion reduction as written by Alvarez &**

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Ridings

1
2 **Marsal here, then that was something that Lazard**
3 **had knowledge of, correct?**

4 MR. DAKIS: Objection to the form.

5 MR. ROTHMAN: Objection to the form.

6 A. Again, my knowledge is I don't recall
7 any discussions where people talked about bulk
8 discounts in the negotiation.

9 I do recall that Barclays
10 consistently said the marks are not current.

11 What this says, I don't know if it's
12 related to what Reilly said at all, but Barclays
13 clearly thought the assets they were getting
14 were not worth what Lehman had them on their
15 books for.

16 And again, remember, they bought a
17 business and the business was conveyed by some
18 assets. This page clearly doesn't list all the
19 things, the gives and takes of the business.
20 This only has a couple of them.

21 **Q. I direct your attention back to**
22 **Exhibit 561A for a moment, and on the second**
23 **page, 4544, on the balance sheet, there is a**
24 **spread between the estimated long positions of**
25 **\$72,650,000,000 and the short positions of**

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1
2 **\$68.400 million, correct?**

3 MR. CARDEN: Objection to form.

4 MR. DAKIS: Same objection.

5 A. There is a difference, yes.

6 **Q. And if that is what Reilly meant when**
7 **he referenced discount, this was also a**
8 **difference known to Lazard as of September 16th,**
9 **correct?**

10 MR. CARDEN: Objection to form.

11 MR. DAKIS: Objection to the form.

12 MR. ROTHMAN: Objection to the form.

13 A. Again, I don't know what Reilly
14 meant. I had seen this schedule, it came out of
15 our files and I obviously know what the schedule
16 says, and there is a difference between total
17 adjusted assets and total liabilities.

18 **Q. And what is that difference, roughly?**

19 A. It's about \$4 billion.

20 **Q. Let me ask you to look at the first**
21 **exhibit again, the APA, and return again to page**
22 **6, the definition of "Purchased Assets,"**
23 **Mr. Ridings, please.**

24 A. Yes.

25 **Q. And you see at subparagraph D there**

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1
2 **is a reference to government securities,**
3 **commercial paper, corporate debt, corporate**
4 **equity exchange, traded derivatives and**
5 **collateralized short-term agreements with a book**
6 **value as of the date here of approximately \$70**
7 **billion long positions?**

8 A. Yes.

9 **Q. Do you recall when you were in court**
10 **on September 19th that one of Weil, Gotshal's**
11 **partners, Lori Fife, explained to the court that**
12 **Lehman was originally selling long positions of**
13 **approximately \$70 billion, but today,**
14 **September 19th, was selling assets with a value**
15 **of \$47.4 billion.**

16 **Do you remember that?**

17 A. I think that's what she said, yes.

18 **Q. Do you know how that \$47.4 billion**
19 **number was derived?**

20 A. I'm not sure how it was derived.

21 **Q. And if you look at the purchased**
22 **assets as defined here, there were a number of**
23 **assets purchased by Barclays in addition to the**
24 **long positions, correct?**

25 MR. CARDEN: Objection to form.

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MR. DAKIS: Same objection.

A. If you're asking did they buy more than what is in paragraph D, the answer is yes. There are lots of letters here, co-signs for 3 pages, what they bought.

Q. And did those other categories that you're looking at there, including the intangibles, furniture and equipment, the residential real estate, mortgages, provide potentially substantial but unquantified values to Barclays?

MR. ROTHMAN: Objection to form.

MR. DAKIS: Same objection.

A. I'm not sure I understand the question.

Q. In addition to the \$70 billion long, these other assets listed there are not quantified, but they provide substantial but unquantified value in the sale, don't they?

MR. DAKIS: Objection to form.

MR. ROTHMAN: Same objection.

A. Let me see if I can understand.

Again, I think Barclays bought a business and the form of the transaction is

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identified in assets and there's a laundry list of running up to letter S of the various things they bought. And again, some of these include goodwill and software and things of that like, and then you also have people. I mean that's not -- you can't convey people but that's something else that Barclays got.

So I think that's the answer. I mean the only number here I think is the approximate number of \$70 billion for subsection D.

Q. When you appeared before the court on September 19th, did you have any certainty as to the value of all purchased assets that were to be conveyed to Barclays?

MR. CARDEN: Objection to form.

MR. ROTHMAN: Objection to form.

A. By "certainty" you mean did I know exactly what they were worth that day.

Q. Let me ask it again.

Did you have any understanding when you testified before the court on September 19th, what the value that day was of the assets, all the purchased assets that were to be conveyed to Barclays?

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A. If you recall, the hearing went till sometime Saturday morning. No one in the courtroom had closing marks for Friday during the hearing, so I think the answer is I didn't know with certainty what the dollar number was of the assets conveyed.

Q. And is it also your testimony that in your view no one could have known?

MR. ROTHMAN: Objection to form.

MR. DAKIS: Same objection.

A. Again, we were selling a business. They were buying a business and they agreed to assume certain liabilities and they paid a certain amount of cash. They were taking -- they were getting these assets.

Once they owned it, it was their risk. When the markets opened Monday, the markets could have gone up or down and that was their risk. I guess it's really Tuesday. Whenever the deal closed.

But at 1:00 a.m. Saturday morning, I don't think any of us had a piece of paper that said the closing marks on these securities are

X. And even if there were, those were the

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Ridings

Lehman numbers. Those may or may not be what Barclays thought they were worth.

Q. So you didn't rely on any precise valuation of assets and liabilities when you recommended approval of the sale to the court on September 19th.

MR. CARDEN: Objection to form.

MR. DAKIS: Same objection.

A. Again, my testimony was that it was the highest and best alternative that we had, and the alternative was liquidation. I was confident and remain confident that this transaction was better than a liquidation would have been.

Q. Earlier in your testimony you made reference to consequences of any loss on the part of Barclays as a result of its purchase of this business.

Can you describe for me what you meant in your response earlier?

A. Sure.

That didn't go into the consideration of whether I thought this was a good or bad deal. Barclays was taking a risk.

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Ridings

I was making a comment kind of as a U.S. citizen. If Barclays had expended this money and the capital markets continued to fall, there was a chance Barclays would then subsequently fail, which would have meant that Goldman, Morgan Stanley, the list goes on and on of firms that may fail. It -- literally we were talking about the end of the capital markets as we knew them that week. It was that bad.

A year-and-a-half later you may say uh, you're overreacting, but I've done this for 35 years. I can't stress to you the unbelievable nature of that week.

So Barclays took a huge risk and if this transaction failed for Barclays, it was a bet the ranch transaction for Barclays.

But that had nothing to do with my opinion as to whether this was the best price and deal for Lehman.

Q. And it was your opinion that it was, correct?

A. What I said in my proffer and on the stand, this was the highest and best that we had and it was clearly better than liquidation.

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Ridings

MR. SCHILLER: Thank you, Mr. Ridings.

MR. CARDEN: Take a break? Take a short break.

MR. SCHILLER: Sure.

THE VIDEOGRAPHER: The time is 10:55 a.m. We're going off the record.

(Recess is taken.)

MR. CARDEN: We don't have any questions.

(Time noted: 10:57 a.m.)

BARRY W. RIDINGS

Subscribed and sworn to before me
this day of 2010.

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CERTIFICATE

STATE OF NEW YORK)

) ss.:

COUNTY OF QUEENS)

I, ANNETTE ARLEQUIN, a Notary Public within and for the State of New York, do hereby certify:

That BARRY W. RIDINGS, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 15th day of January, 2010.

ANNETTE ARLEQUIN, CCR, RPR

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1 HIGHLY CONFIDENTIAL - J. RODEFELD

2 UNITED STATES BANKRUPTCY COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 -----x

5 In Re:

6 Chapter 11

7 LEHMAN BROTHERS

Case No. 08-13555(JMP)

8 HOLDINGS, INC., et al., (Jointly Administered)

9 Debtors.

10 -----x

11 * * *HIGHLY CONFIDENTIAL* * *

12 DEPOSITION OF JOHN RODEFELD

13 New York, New York

14 August 27, 2009

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17
18
19
20
21
22
23 Reported by:

24 KATHY S. KLEPFER, RMR, RPR, CRR, CLR

25 JOB NO. 24294

1 HIGHLY CONFIDENTIAL - J. RODEFELD
2 Schiller & Flexner on behalf of Barclays.

3 MR. TAMBE: And we have counsel on the
4 phone as well?

5 MR. O'BRIEN: This is Tom O'Brien at
6 Quinn Emanuel in Los Angeles on behalf of
7 the Creditors Committee.

8 BY MR. TAMBE:

9 Q. Mr. Rodefeld, I'm going to ask you
10 some questions about the Lehman/Barclays
11 transaction and what role, if any, you may have
12 played in connection with that transaction. And
13 the time period I'm going to be focused on is
14 really sort of September 2008, and to the extent
15 you had an involvement after September 2008,
16 we'll ask you some questions about that. Okay?

17 A. Fine.

18 Q. You're employed by Barclays Capital
19 now?

20 A. That's correct.

21 Q. How long have you been at Barclays
22 Capital?

23 A. Since January 1999. Ten and a half
24 years.

25 Q. And prior to Barclays Capital, by whom

1 HIGHLY CONFIDENTIAL - J. RODEFELD
2 were you employed?

3 A. Salomon Brothers, Inc.

4 Q. And how long had you been at Salomon?

5 A. 16-plus years.

6 Q. Starting in January '99 to the
7 present, if you could just give us a brief
8 overview of your career at Barclays Capital,
9 what departments, positions, et cetera.

10 A. Okay. I was hired out of the UK. I
11 was an expat at Salomon Brothers. Came over
12 back to the U.S. as a senior operations manager,
13 various line management responsibilities over a
14 number of different functional areas, through
15 the years taking on more responsibilities.

16 I believe it was in early, mid 2007
17 when I took over all of U.S. operations, which I
18 managed until the Lehman integration, at which
19 point I was -- I took on more global
20 responsibilities and various line management
21 responsibilities in the U.S.

22 Q. And what's your current title and
23 position at Barclays?

24 A. I'm a managing director in charge of
25 various operations, global and regional.

1 HIGHLY CONFIDENTIAL - J. RODEFELD
2 Q. Within sort of the various divisions
3 or working groups at Barclays Capital, is there
4 a particular group that you head up?

5 A. There's a number of groups I head up.

6 Q. If you could describe those?

7 A. On a global basis, I'm responsible for
8 all the global reference data, which is all the
9 accounts and the instrument.

10 Q. Okay.

11 A. Globally, I'm also responsible for the
12 collateral -- within those groups, there's a
13 couple hundred, 300 people or so -- mostly
14 responsible globally for the Collateral
15 Management Unit. Regionally, I'm responsible or
16 mostly responsible for the Mexico and the Brazil
17 offices of operations, and then locally here in
18 the U.S. I'm responsible for all the OTC
19 derivative operations, emerging market
20 operations, commodities, securitized products,
21 and some other various aspects.

22 Q. Is it fair to say that throughout your
23 tenure at Barclays Capital you have been
24 involved in managing operations? The scope of
25 the operations you manage may have changed, but

1 HIGHLY CONFIDENTIAL - J. RODEFELD
2 you effectively have been managing operations in
3 one form or the other?

4 A. That's correct. That's for my whole
5 career.

6 Q. And if you could give us a description
7 of what it means to manage operations, what's
8 included in that?

9 A. Making sure that all the aspects of
10 confirmations, settlements, reconciliations,
11 balancing, general ledger reconciliation and so
12 forth, anything post-trade.

13 Q. And does your job encompass making
14 sure there are systems in place to make sure
15 those things happen, but are you also checking
16 the actual results of those operations?

17 Do you understand the question?

18 A. I think so.

19 Q. Okay.

20 A. My job is to manage people that manage
21 most of the line functions. I do look at some
22 of the MIS that's produced out of those
23 functional areas to make sure that, you know,
24 anything that looks out of place, I might review
25 it and discuss it with them. But by and large,

HIGHLY CONFIDENTIAL - J. RODEFELD
that something you would have been involved in?

A. Probably not. As long as I knew we had an agreement in place, I was going -- I would settle it.

Q. So that's the Monday. Let's go down the week. What's your recollection of what your involvement was with the Lehman/Barclays transaction the next day?

A. I believe on Tuesday we increased the tri-party, and I forget if it went from 2 to 5 or 2 to 10, I just don't remember that, and it was at that point, I believe it was on Tuesday afternoon that we found out that we might have to take over the funding for the discount window for taking the Lehman and Chase out and putting Barclays and BONY in place.

Q. And you'd be taking over the discount window from the Fed financing that was being provided?

A. Correct. So that was the first, I believe it was on Tuesday that that was raised as that had to happen by Thursday.

Q. And there was a much larger repo financing transaction done by Barclays on

HIGHLY CONFIDENTIAL - J. RODEFELD
Thursday, correct?

A. That's correct.

Q. Is that the \$45 billion?

A. Correct.

Q. Between the Tuesday and the Thursday, what role, if any, did you play in anticipation of that \$45 billion funding?

A. In terms of the role that I played, it was more of coordination, working with the likes of the settlements folks, both at Lehman and at Barclays, to rationalize how we were going to unwind one, take it to the other, and get it all done in the same day. So it was more of operational aspects of how to get it done based on a defined population.

Q. We've heard about a couple of meetings. One meeting at the Fed, one meeting at the DTCC.

Do you recall being at any such meeting in connection with that?

A. I wasn't -- no, I didn't attend any of those meetings.

Q. And again, your focus in discussing all of this was from the operations side to make

HIGHLY CONFIDENTIAL - J. RODEFELD
sure it ran smoothly; is that correct?

A. That's correct.

Q. Okay. It's my understanding that the collateral that had been pledged to the Fed was going to be transferred either via Fed wire or DTC; is that correct?

A. Yes.

Q. Were there also any physical securities that would need to be transferred?

A. We weren't sure at the time. We just didn't have the full population at the time.

Q. Going into Thursday, did you play any role in drawing up lists or reviewing lists of collateral that would be transferred over?

A. On the -- we had gotten a list I believe it was either Tuesday or Wednesday of the population that would be coming to us.

Q. And this is a list you got from Lehman?

A. I think it came from Lehman. I'm -- I just don't recall, but I'm assuming it either came from Lehman or in-house. Somebody gave it to us.

Q. Did the list that you received on this

HIGHLY CONFIDENTIAL - J. RODEFELD
Tuesday or Wednesday timeframe have any valuation for the collateral?

A. I don't recall. I don't know. I really did not focus on the list per se other than the fact that it was a list out there.

Q. And again, in this time period, Monday, Tuesday, Wednesday of that week of the 15th, had anyone described to you generally what the overall Lehman/Barclays transaction was about?

A. I don't believe so. I believe at the time I was just told that we were doing a large financing trade because that there was some type of an acquisition was going to take place.

Having been involved in a due diligence the prior weekend, I knew that we were looking at Lehman, various aspects, you know, so I knew that that was out there, but didn't know what we were looking to buy, what we were looking to sell, other than the fact I knew I had to process whatever came down.

Q. In connection with the Lehman/Barclays transaction, there's a contract called the Asset Purchase Agreement. Is that a contract that

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1 **HIGHLY CONFIDENTIAL - J. RODEFELD**
2 **you've ever seen?**

3 A. Yes.

4 **Q. Okay.**

5 A. Yeah, I believe I saw that in December
6 when we were looking at the Chase settlement. I
7 think that might be the first time I saw that.

8 **Q. There's another document that's**
9 **referred to as a clarification letter. Are you**
10 **familiar with that phrase?**

11 A. I'm familiar with the phrase. I don't
12 believe I saw a clarification letter.

13 **Q. Do you have any understanding of a**
14 **clarification letter and what role, if any, it**
15 **may have played in the Lehman/Barclays**
16 **transaction?**

17 A. No.

18 **Q. And just filling in some blanks in my**
19 **mind from your answer about the Asset Purchase**
20 **Agreement, is it fair to say that you had no**
21 **role in the negotiation of the Asset Purchase**
22 **Agreement in any way?**

23 A. That's correct, I had no role at all
24 in that.

25 **Q. You were just shown the agreement for**

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1 **HIGHLY CONFIDENTIAL - J. RODEFELD**
2 **the first time sometime in December?**

3 A. Yes.

4 **Q. In September, in the week of September**
5 **15th, did anyone describe to you orally,**
6 **broadly, the economics of the deal?**

7 A. I'm sorry, when was this?

8 **Q. The week of September 15th.**

9 A. No.

10 **Q. Thereafter, after the week of**
11 **September 15, has anyone ever described to you**
12 **broadly the economics of the deal?**

13 A. No.

14 **Q. Do you have any understanding one way**
15 **or the other whether Barclays recognized a gain**
16 **on the acquisition of the Lehman assets that it**
17 **purchased?**

18 A. No.

19 **Q. Going into Thursday of that week, it's**
20 **the 18th, describe for me generally what you**
21 **were doing on the 18th? That's the day of the**
22 **big repo.**

23 A. Okay. Starting on Wednesday, we had a
24 plan put in place between the two organizations
25 on how we were going to process the work on

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1 **HIGHLY CONFIDENTIAL - J. RODEFELD**
2 **Thursday. So we have to start there.**

3 So we came in with a plan on Thursday
4 to process the reverse repo, and the kick-off
5 was to send them funds, piece of the funds, and
6 then taking collateral back, and then we would
7 repeat that exercise until we got up to the 45
8 billion that was necessary to complete the
9 transaction. So I was sitting at 200 Park
10 Avenue. Most of the action would have been done
11 in our Whippany office because that's where our
12 processing hub was.

13 So, on the phone with the folks in
14 Whippany, sent over the first 5 billion sometime
15 in the morning, and it was taking quite a long
16 time to get the collateral back to settle the
17 first tranche. Recognizing that we had a long
18 way to go, recognizing that the market
19 facilities have closing times, the Fed, DTC, and
20 not getting enough of the answers, I took a cab
21 over to the Lehman offices at 745 Seventh
22 Avenue.

23 It was there I met with David Aronow
24 and some other folks, possibly Alastair,
25 possibly others, I just don't remember who was

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1 **HIGHLY CONFIDENTIAL - J. RODEFELD**
2 **there on that morning, and we discussed why it**
3 **was taking so long to get the rest of the**
4 **collateral on the first lot of 5 billion.**

5 From that point on, there were lots of
6 discussions, and at some point in the early
7 afternoon, we were told to send the bulk of the
8 money over, that there was commitment to send
9 collateral to us, okay? So I instructed our
10 payments group to make the rest of the 40
11 billion.

12 We took in the rest of the collateral.
13 We worked to take in the rest of the collateral.
14 The market facilities, the Fed wire and DTC,
15 extended their closing time late into the
16 evening, and we worked to get the collateral in
17 the door to satisfy the reverse repo.

18 **Q. And when all the action stopped, the**
19 **transfers stopped Thursday night, what was the**
20 **status of the collateral movement? How much had**
21 **moved over?**

22 A. On the securities or the cash?

23 **Q. On the securities.**

24 A. On the securities, what Bank of New
25 York had told us at the point in time from their

1 HIGHLY CONFIDENTIAL - J. RODEFELD
2 records that they had felt that there was I
3 believe 42-point-something billion of market
4 value that had come in.

5 Q. And how about on the cash side?

6 A. On the cash side, we had taken in a
7 piece of -- well, 300 million, originally, which
8 was part of DTC because one of the securities
9 had matured, so they paid us the cash rather
10 than the securities as the collateral. And then
11 we then went into, we were short collateral, and
12 we did a tri-party for the difference of the 7
13 billion.

14 Q. So there was a 7 billion cash
15 component and a 42-and-change billion dollar
16 securities component?

17 A. Based on BONY's marks, yes. We had no
18 line of sight to those marks.

19 Q. What do you mean by that?

20 A. I didn't see them personally.

21 Q. Later on, in subsequent days, Friday,
22 Saturday of that week, the 19th, the 20th, did
23 anyone express to you any concerns about the
24 BONY marks?

25 A. I'm sorry, what dates?

1 HIGHLY CONFIDENTIAL - J. RODEFELD
2 reconcile values, anything of that nature?

3 A. No.

4 Q. Were you aware of other people doing
5 that at Barclays?

6 A. Not directly aware. I assumed other
7 people were looking at it, but I don't know
8 specifically, you know, that anybody on an
9 individual basis was looking at them.

10 Q. Putting aside the collateral that
11 moved on Thursday, the 18th, were you involved
12 in any collateral movements that were initiated
13 on Friday, the 19th?

14 A. I'm sorry, say that again.

15 Q. Were you involved in any collateral
16 movements from Lehman to Barclays that were
17 initiated on Friday, the 19th?

18 A. Yes.

19 Q. Okay. Describe those, please.

20 A. On Friday morning, Lehman delivered us
21 a population of securities, I believe it was a
22 billion and change, to our Bank of New York
23 account and I took those securities in.

24 Q. When you say "a billion and change,"
25 does 1.9 sound about right?

1 HIGHLY CONFIDENTIAL - J. RODEFELD

2 Q. The Friday, Saturday, the subsequent
3 days.

4 A. Not -- no, I don't believe -- no, I
5 don't recall the discussions on anybody raising
6 issues to me on the marks themselves.

7 Q. Were there any issues raised on the
8 Friday, Saturday, Sunday, so again the days
9 after this collateral movement took place, about
10 the Cusips that had been transferred over?

11 A. The -- well, by and large, we didn't
12 have many of the Cusips in our systems because
13 we didn't trade the products. So a large
14 percentage of the assets that we took in we had
15 not in our systems to begin with. So the
16 question -- we didn't have questions because we
17 didn't even have the trades. The securities, we
18 didn't trade some of the securities, so it
19 wouldn't -- there was no questions, it was just
20 that we took them and we put them into Bank of
21 New York as a lockup place.

22 Q. Were you involved in any discussions
23 or any activities on the Friday, Saturday,
24 Sunday after there was collateral movement to
25 try and reconcile pieces of collateral, to

1 HIGHLY CONFIDENTIAL - J. RODEFELD

2 A. It could have been. I just -- I know
3 it was over a billion.

4 Q. And do you know why Lehman was
5 delivering these securities on Friday?

6 A. Not particularly.

7 Q. Have you heard anything about it?

8 A. I knew it was coming, but I wasn't
9 aware if it was collateral or anything else.
10 They just came, so I took them in.

11 Q. Were there any transfers of cash from
12 Lehman to Barclays that you were aware of on
13 Friday?

14 A. No.

15 Q. After that weekend of the 20th/21st of
16 September -- actually, withdraw that. At any
17 time in connection with the Lehman/Barclays
18 transaction were you involved in any discussions
19 concerning OCC margin?

20 MR. SHAW: And let me just caution you
21 not to discuss -- not to disclose any
22 discussions you had with counsel for
23 Barclays about that issue.

24 THE WITNESS: Okay.

25 There were discussions with counsel on

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<p>1 HIGHLY CONFIDENTIAL - J. RODEFELD</p> <p>2 collateral to be moved?</p> <p>3 A. No, I was given a list.</p> <p>4 Q. Who gave you a list?</p> <p>5 A. I don't recall if it was Chase or if</p> <p>6 somebody internally had sent it to me, but I did</p> <p>7 get the list.</p> <p>8 Q. And how long was your involvement?</p> <p>9 How many days were you involved in this December</p> <p>10 exercise?</p> <p>11 A. Right through the settlement, and any</p> <p>12 reconciliations that would have taken place</p> <p>13 after the movement of the securities and the</p> <p>14 cash, there were -- there was a protracted</p> <p>15 reconciliation going on on the physical</p> <p>16 securities that we received that took probably</p> <p>17 the better part of a month to reregister them</p> <p>18 out of the name of the previous holders into</p> <p>19 Barclays' name. So, from a mechanics point of</p> <p>20 view, I was involved in that probably into</p> <p>21 January.</p> <p>22 MR. TAMBE: Let's just take a short</p> <p>23 break. We'll get some exhibits together and</p> <p>24 carry on.</p> <p>25 (Recess; Time Noted: 10:26 A.M.)</p>	<p>1 HIGHLY CONFIDENTIAL - J. RODEFELD</p> <p>2 (Time Noted: 10:33 A.M.)</p> <p>3 (Exhibit 280A, a document bearing</p> <p>4 Bates Nos. BCI-EX-(S)-47647 through 47648,</p> <p>5 marked for identification, as of this date.)</p> <p>6 BY MR. TAMBE:</p> <p>7 Q. Sir, I have placed before you a</p> <p>8 two-page document marked 280A. Take a moment to</p> <p>9 look at it. I'll ask you a couple of questions.</p> <p>10 (Document review.)</p> <p>11 A. Okay.</p> <p>12 Q. Focusing on the e-mail at the top of</p> <p>13 page 1 from John Haley to you and others, do you</p> <p>14 see that?</p> <p>15 A. Yes.</p> <p>16 Q. Mr. Haley makes a comment in his</p> <p>17 e-mail, second sentence, "There is some Fed</p> <p>18 collateral that is not eligible for GCF</p> <p>19 transaction." Do you understand what he meant</p> <p>20 by that?</p> <p>21 A. No.</p> <p>22 Q. What is a GCF transaction?</p> <p>23 A. I don't know. I'm not a -- it's -- I</p> <p>24 assume it's some type of cash management</p> <p>25 tri-party something, but I just don't -- I'm not</p>
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<p>1 HIGHLY CONFIDENTIAL - J. RODEFELD</p> <p>2 a guru on the GCF stuff.</p> <p>3 Q. On the second page, there's one</p> <p>4 particular bullet point I want to ask you about.</p> <p>5 There's a bullet point where John Haley writes,</p> <p>6 "Lehman pledges to BONY Account 855."</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. Do you have any understanding about</p> <p>10 that account, the 855 account at BONY?</p> <p>11 A. Limited. I know it's an account that</p> <p>12 Barclays has that we take in collateral to.</p> <p>13 Q. Was that account specifically set up</p> <p>14 for purposes of this transaction?</p> <p>15 A. I don't recall. I don't believe so.</p> <p>16 It may have been open prior to that, but I don't</p> <p>17 know that for certain.</p> <p>18 Q. I have placed before you a document</p> <p>19 previously marked Exhibit 124. If you take a</p> <p>20 moment to look at it, let me know when you're</p> <p>21 done and I'll ask you a few questions.</p> <p>22 A. Okay.</p> <p>23 (Document review.)</p> <p>24 A. Okay.</p> <p>25 Q. Just drawing your attention to the</p>	<p>1 HIGHLY CONFIDENTIAL - J. RODEFELD</p> <p>2 e-mail that starts on page 1 over onto page 2,</p> <p>3 which is an overview of the mechanics of the</p> <p>4 trade that was done on Thursday, did you play</p> <p>5 any role in developing those mechanics?</p> <p>6 A. I'm sure I participated in some of</p> <p>7 those conversations that I was part in most of</p> <p>8 those discussions on Tuesday and Wednesday as we</p> <p>9 prepped for it. Much of the discussion I</p> <p>10 believe was John Haley discussing it, the actual</p> <p>11 aspects of the deliveries and the receipts as a</p> <p>12 settlement protocol with his colleagues at</p> <p>13 Lehman.</p> <p>14 Q. Was it your understanding that all of</p> <p>15 the collateral pledged by Lehman to the Fed was</p> <p>16 going to be transferred to Barclays?</p> <p>17 A. I was aware that we were -- we had a</p> <p>18 list that was going to be transferred to us.</p> <p>19 Whether that list had all Fed stuff in it or</p> <p>20 other stuff I wasn't privy to. So whatever was</p> <p>21 on the list is what I knew we were taking. That</p> <p>22 may or may not have been discount window.</p> <p>23 Assumption probably was a good piece of it was,</p> <p>24 but if it was in total, I didn't have access to</p> <p>25 that information.</p>

HIGHLY CONFIDENTIAL - J. RODEFELD

Q. Did you have any understanding that there were assets pledged to the Fed that Barclays had specifically said would be excluded from the transfer?

A. No.

Q. Are you aware generally of any list of excluded assets that was transmitted by Barclays to Lehman in connection with this transaction?

A. There was a list, and I don't know if it was transmitted to them or if we had a list, that there was concern that we did not want any substitutions from the list. So we were given a list, and I don't remember if I saw the list or if it went to the Whippany office or whatever, but I recognized that there was a list of assets that we weren't going to take in case there had to be substitutions for whatever reason.

Q. And just so we understand, generally why would there be reasons for substitution in the context of a repo?

A. Well, typically there wouldn't be, right? But typically you repo one for one, one trade, one repo, not one trade, multiple securities.

HIGHLY CONFIDENTIAL - J. RODEFELD

A. Early Friday morning, actually.

Q. Early Friday morning.

A. It's actually late, yeah, it's GMT time. So it's probably 12 o'clock. I don't know what time it is.

MR. SHAW: It's daylight savings, so probably about 1 in the morning.

THE WITNESS: Okay.

Q. So we have in the e-mail from Mr. Haley to you and others sort of a recap of the transaction, correct?

A. Yes.

Q. The values that appear in his e-mail, do you know where those values come from?

A. Bank of New York.

Q. Just generally from the operations perspective, if you have collateral that's coming to you from a custodian for a tri-party arrangement, do the values ascribed by the tri-party custodian travel with that collateral? That wasn't a good question.

From an operations perspective, if you have collateral going back and forth in a tri-party repo arrangement?

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Q. Was this trade any different where there was a concern that there might be substitutions?

A. No, we were working off of the assumption that we were going to get what was on the list.

(Exhibit 281A, a document bearing Bates Nos. BCI-EX-(S)-47924 through 47926, marked for identification, as of this date.)

Q. Sir, I have placed a three-page document before you marked Exhibit 281A. Take a moment to look at that and I'll ask you some questions.

A. Okay.

(Document review.)

A. Okay.

Q. I'll focus on the first e-mail on page 1, over onto page 2. It's from John Haley to several people, including you. Do you see that?

A. Yes.

Q. Judging from the time and date stamp, this appears to be late Thursday night in --

A. Yeah.

Q. -- New York, right?

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A. Right.

Q. Is it your understanding that the custodian for that tri-party repo agreement assigns values for that collateral?

A. Typically, they will assign values because they are the ones that are going to allocate it into the third party to secure the overnight loan, but we have our own systems that also value that collateral. So we'll sanity-check what the third party tri-party agent puts on to make sure we're getting efficient use of our collateral versus the cash we're borrowing.

So, in essence, they put the values on, which is the rules of the road, but we can challenge it, and we do if we don't think that they're putting accurate values on that what our systems are telling us.

Q. And in connection with the Lehman/Barclays repo, are you aware of any challenges made by Barclays to the BONY evaluations?

A. No, to the extent that we didn't have -- typically, we would own the securities,

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2 so we would know what the values are from our
3 own systems. This was an unusual circumstance.
4 We didn't have the trades in our system, so we
5 didn't have the ability to challenge from a
6 systems perspective.

7 (Exhibit 282A, a document bearing
8 Bates Nos. BCI-EX-(S)-47942 through 47944,
9 marked for identification, as of this date.)

10 Q. Sir, I have placed before you a
11 document marked Exhibit 282A. Take a moment to
12 look at that document and let me know when
13 you're done. I'll ask you a couple questions.

14 A. Okay.

15 Q. This e-mail chain in Exhibit 282A on
16 the first page has an e-mail from you to Teri
17 Scott and several other people at Barclays, do
18 you see that?

19 A. Yes.

20 Q. And just looking at the names and the
21 e-mail addresses, looks like a lot of these
22 folks are in the Finance Department at Barclays,
23 is that fair?

24 A. Yeah, ops. and finance, yes.

25 Q. And you were providing a report in

1 HIGHLY CONFIDENTIAL - J. RODEFELD
2 this e-mail describing the close-out of the
3 tri-party for 15.8 billion, correct?

4 A. Yes.

5 Q. And you're describing broadly the
6 Barclays/Lehman repo which took out the Fed,
7 correct?

8 A. Correct.

9 Q. I want to understand for what purpose
10 are you providing the summary to the finance
11 people?

12 A. Just as a form of completeness, I
13 think. There was probably no motivation other
14 than just keeping everybody in the loop of where
15 we were.

16 Q. And further up in that e-mail chain,
17 there's a response to your e-mail from someone
18 in the Treasury Department, Mr. Garcha, do you
19 see that?

20 A. Yes.

21 Q. And he says, "Scott Wadlow has some
22 questions for you," see that?

23 A. Yes.

24 Q. Who is Scott Wadlow?

25 A. I don't know. I assume it was

1 HIGHLY CONFIDENTIAL - J. RODEFELD
2 somebody in Treasury or somebody. I don't know
3 the -- the name vaguely looks familiar, but I
4 don't know who he is.

5 Q. Let me go way out on a limb here. Do
6 you remember speaking with Mr. Wadlow?

7 A. No.

8 Q. Do you remember speaking with anyone
9 from Treasury on or about February -- sorry, on
10 or about Friday, the 19th of September, about
11 this transaction?

12 A. I very well could have. I don't
13 recall specific conversations. I worked right
14 through the night through till the next day, so
15 there would, you know, there could have been
16 conversations and I'm just not remembering them,
17 nothing in particular.

18 Q. Were you involved at all in working
19 with Barclays' auditors to prepare the account
20 statements for Barclays concerning this
21 acquisition?

22 A. Peripherally, yes. They had asked me
23 some questions and sat down with me, but I don't
24 remember specific working with them on it at
25 all.

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2 Q. Do you remember any of the topics on
3 which they asked you questions?

4 A. Sure. They asked about the
5 transaction itself and just general what would
6 happen over those two days and how we accounted
7 for the securities and how we booked and
8 rebooked the trades and what was the
9 reconciliation process and so forth and so
10 forth, more mechanical in nature, making sure
11 all the trades got into the system, did we
12 reconcile to the depots and so forth and so
13 forth. So I'm sure there were conversations of
14 that nature regarding the transaction.

15 Q. Do you recall having any discussions
16 with anyone about where, what legal entity the
17 trades would be booked in for tax purposes?

18 A. Related to the September --

19 Q. Related to the Lehman/Barclays
20 transaction either in September or any transfers
21 that were made in December.

22 A. In December there were discussions
23 about legal entities related to the Chase
24 settlement.

25 Q. Okay. And with whom did you have

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A. She is an operations manager that ran the Cash Management Team at Barclays Capital.

Q. Do you recall receiving this e-mail from Ms. Turner?

A. Not particularly, no.

Q. At the bottom of the string, she forwards an announcement from Citibank, CLS Services, do you see that?

A. Yes.

Q. What are the CLS Services?

A. That is the FX netting that gets done by a facility called CLS, which is continuous link settlement, where it's a market facility that takes the -- all the FX trades with the dealers and nets them down and all the participants within it and creates a net amount per currency that each dealer has to settle upon as opposed to moving hundreds and thousands of payments individually.

Q. And "FX" refers to foreign exchange?

A. That's correct.

Q. Did Barclays have a foreign exchange business?

A. Yes, it did.

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to the job you were doing in operations?

A. Oh, I'm sure it would have been related to do we need to worry about any processing of the FX support.

Q. Did anybody at Barclays give you a rundown or a summary of which businesses you were taking from Lehman and which you were not?

A. Nothing on a -- I have not received anything formally from anybody.

Q. You didn't read anything?

A. I don't recall like a list that says we're taking this, not taking this, nothing like that.

Q. So you don't really know --

A. I don't know what context I was sending this other than the fact that, you know, she was passing on information related to CLS, and because we weren't taking the FX business, I was communicating to her that it shouldn't be an issue, that they're not -- that CLS is shutting down on the Lehman side because we weren't doing their FX business.

Q. But you don't recall how it is you learned that Barclays was not taking the FX

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Q. And were you involved --

A. Not Barclays Capital, no. Barclays, PLC.

Q. Were you involved in that business at all? This is now prior to the sale transaction with Lehman.

A. Very, very limited. Most of the processing and the operations for all our FX business was in London and Singapore. So only to the extent there might be some support people on the desk that would come in to me.

Q. Okay. You write back to Ms. Turner, "We are not taking the FX business from Lehman."

A. Correct.

Q. How did you know that?

A. I don't recall, other than the fact that I must have asked somewhere along the line to say, you know, are we taking any position in the FX, long and -- that's what I'm surmising from this. I don't remember, you know, why I asked. I'm sure I asked it about all the product asset classes that would have been out there on the Lehman entities.

Q. And you think that because it relates

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business from Lehman?

A. No, I don't recall that.

Q. The second sentence of your e-mail, you say, you write, "Suspect we will cherrypick the better sales and traders." Are you referring there to the FX business?

A. I'm sure I must have been, just thinking along those -- just from reading it at face value, that's what I would have probably just surmised. No fact or based on fact, just chatter.

Q. Put that exhibit aside. Let's go back to a new topic now -- actually, an old topic, the repo transaction that you testified about this morning that took place on Thursday where Barclays replaced the Fed.

A. Right.

Q. And I think by Friday you said that you had received certain collateral had come in to the Bank of New York; is that right?

A. On Friday, you're saying, or Thursday?

Q. That Thursday night into Friday morning, but by Friday morning you had received certain collateral?

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A. Correct.

Q. So you had approximately \$42 billion in securities?

A. Based on Bank of New York's marks.

Q. Right. And you had 7 billion in cash?

A. Correct.

Q. And then there was another 1.1 billion you said that came in on Friday, but you weren't sure if that related to the repo or not, is that fair?

A. That's accurate.

Q. Okay. How are you mechanically getting this information? Is there a system that you look at? Do you get a report from the Bank of New York?

A. I don't get a report. There may be a report that's driven. I don't know enough about the mechanics of the 855 account at DTC whether they produce something. Typically, I wouldn't care because I would have my own books and records to rely on.

So what happens at the 855 reporting through Bank of New York, I don't know what they do, if they -- how they handle that account. I

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just don't know enough about that account.

Q. How do you learn that there's \$42 billion in securities that have made their way to the Bank of New York account?

A. It was all verbal over the box coming from Bank of New York as assets were coming into the account.

Q. Okay. And is your group then responsible for determining where those assets go next?

A. Yes. Yeah.

Q. Okay. And do you know what happened to that 42 billion in securities?

A. Yes.

Q. What happened to it?

A. We executed trades against them, actual outright trades, and then we moved them out of that location into our proprietary accounts since we purchased them outright. So they would go into our normal DTC or Fed BAU accounts.

Q. When you say you purchased them outright, what are you referring to?

A. We purchased those assets, a series of

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assets. The location of those assets were sitting at -- in my 855 account, which was a location just to put those securities. We then took them out of the 855 DTC account at Bank of New York to our proprietary Barclays accounts at DTC.

Q. Okay.

A. Because they become -- once we purchase them outright, they became part of our normal box positions.

Q. When you say you purchased them outright, are you referring to the sale transaction with Lehman?

A. The -- I don't know the terminology you're using. What I do know is we booked transactions to buy those securities from Lehman. Those trades that were booked in our systems had securities that were in the 855 account.

Mechanically, I have a trade in my system saying you have purchased securities from Lehman. You have a location at 855. From a mechanical point of view, I just move the securities from the 855 account into my

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propriety account to settle that transaction since we have purchased them outright from Lehman.

Q. What's the basis of your understanding that you have purchased them outright from Lehman? Did somebody tell you? Did you read it somewhere?

A. No, transactions are booked in our trade capture systems by traders.

Q. So you can tell from the system?

A. The front office system feeds our settlement system, which says, okay, we've done a purchase of securities and we knew that the securities that we were purchasing from Lehman, we knew where the location was because the day before they were all put into that account, or two days before, whatever the date they actually came in.

Q. Okay. Now, are you also tracking the \$7 billion in cash collateral?

A. Yes.

Q. And what happens to that \$7 billion in cash?

A. First, we requested that 7 billion on

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Friday through our normal course of business. We asked Chase to put it into our -- I believe into our DDA account at Chase. That didn't happen. We got a statement that day showing that we had the tri-party outstanding, so we were comfortable.

Monday we got another statement from Chase saying the 7 billion is still in the tri-party account. We were comfortable. We asked them again to move it out to Barclays' account, and then sometime after that it became evident that Chase wasn't releasing that 7 billion back to us immediately, and that's when we escalated it up the ranks to the management line.

Q. Is Barclays purchasing the 7 billion in cash the same way it's purchasing the 42 billion in securities?

MR. SHAW: Objection to form.

You can answer.

Q. You can answer, if you understand.

A. I don't know what the assets they were purchasing.

Q. Okay. But with respect to the cash,

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three- or four-week period from September 22nd, I believe, through the three or four weeks.

The reason it took so long to book all those trades, normally you would do that pretty quickly, but we didn't have a lot of those instruments set up in our databases since we weren't trading them. So the back-end process of getting the instruments set up in the system, making sure you can process trades for them, making sure you have all the information you need to set up the instrument, probably 70 percent of those instruments were easily set up in our security database. Then there were other instruments that just took longer.

So, until you get that instrument, that's the starting point. It has to be in our instrument database so you can book a trade against it. So there was a lag time between the 9/22 until we finally finished booking all the trades.

Q. When you say "all the trades," you're including both the securities that made up the 42 billion in securities that transferred on Thursday and also the 1.1 billion that

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do you also see in your system whether it's been purchased or not?

A. No. It sits out there as a tri-party trade. So it's a financing trade, but for technical purposes, that's the only way it goes into the system as tri-party.

Q. How about the \$1.1 billion in securities that you told us was transferred on Friday?

A. Right.

Q. Did you know what happened to those securities?

A. They got -- they were commingled with all the other securities into the 855 account and they just sat there and became part of that portfolio that we took in from Thursday and Friday.

Q. And did your system show that Barclays had purchased those securities?

A. At some point later on, yes, when they booked the trades into the system showing that they bought them outright.

Q. When did that occur?

A. That occurred over a, probably a

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transferred on Friday, is that fair?

A. It was the full population that was in the 855 account, correct.

Q. And is it fair that -- just so I understand what you're telling me, you see in your system that it's been purchased and that's the basis for why you say Barclays bought these outright, but you don't have any independent understanding based on any of the deal documents or --

A. I wasn't part of any -- the negotiations or any part of the deal at all other than the settlement aspects.

Q. I'm going to mark as 285, Exhibit 285A, an e-mail from you to Gerard LaRocca. It's Bates-stamped 49066.

(Exhibit 285A, a document bearing Bates Nos. BCI-EX-(S)-49066, marked for identification, as of this date.)

(Document review.)

A. Okay.

Q. This e-mail is an e-mail that you send to Mr. LaRocca on Wednesday, September 24, correct?

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A. Uh-huh.

Q. You need to answer out loud.

A. Oh, sorry. Yes.

Q. So this is now in the middle of the next week after --

A. Correct.

Q. -- the repo transaction?

MR. SHAW: Actually, I would point out that this appears to be sent Tuesday night. We've got that GMT problem.

MR. ROTHMAN: Fair enough.

Q. Do you recall sending this e-mail to Mr. LaRocca?

A. Not particularly.

Q. You write, "Rich was looking for the market value and confirmation of the securities we received on Friday from Lehman as part of the 1.9 billion they were going to post."

Who is Rich?

A. I don't know, but it could be Rich Ricci or it could be another Rich. I just don't remember.

Q. And you write, "On Friday we received collateral worth 1.077 million."

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A. Correct.

Q. Is that the 1.1 million we've been talking about?

A. That was received on the Friday.

Q. Correct.

A. Correct.

Q. That's the same --

A. I -- yes, if it's on Friday we received the collateral worth, that would be the same collateral. That was the only collateral we received on that Friday.

Q. Okay. And then you refer to a schedule with a list of another 990 unique issues?

A. Uh-huh.

Q. What does that mean, "unique issues"?

A. Individual issues. We had a schedule that Lehman had sent us saying they were going to deliver us these securities, but we didn't get them all. So this is -- I'm just referencing the fact that we didn't get everything that was on the schedule.

Q. So you were supposed to get another 990 individual securities with a market value of

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862 million?

A. That's what I would recollect based on this e-mail, yes.

Q. Okay. And then you say that the reason is because DTC put the block on the account?

A. Correct.

Q. What happened with respect to that?

A. Friday morning, the market opens up. DTC has accounts that are open at -- Lehman has accounts that have opened at DTC at that point in time, so they started delivering me assets. I took those assets, and then a point in time came where DTC stopped allowing Lehman to use that account so they put a block on it, whatever terminology. I don't know if that's the formal terminology, but they basically were not allowing Lehman to move any more collateral out of that account.

Q. Did you know why DTC was doing that?

A. I had no idea at that point what was causing that.

Q. Did you find out later?

A. Later I found out that they declared

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bankruptcy, I think it was on that Friday, but I'm not a hundred percent sure. But that's probably what I recollected happened at the time, but I'm not a hundred percent certain. But I would assume that would have been the reason why the DTC stopped them.

Q. Did you hear from anybody that that was the reason?

A. I don't remember.

Q. Did you read any --

A. I don't know the reason other than the fact that I remember that there was a bankruptcy that day, and it would have seemed logical sense that DTC would have put a stop on it until they could figure out where they were at. That would have been my best guess of what I...

Q. Okay. So, as of that Friday, Barclays has collateral now of 49, approximately \$49 billion, consisting of the 42 billion in securities and the 7 billion in cash; is that right.

A. Based on Bank of New York's valuations.

Q. Right.

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A. Yes.

Q. Why is Lehman posting an additional 1.9 billion on Friday or intending to post an additional 1.9 billion on Friday? Do you know?

MR. SHAW: Objection. Foundation.

A. I don't know why they posted it at that point in time on Friday morning. I just took the collateral.

Q. Okay. But your understanding was that Barclays was supposed to have approximately \$49 billion in collateral, correct?

A. Barclays was supposed to have approximately 49-point-something billion dollars worth of collateral. We had no way to validate what the real valuation was of that collateral other than what Bank of New York was telling us.

Q. Do you know whether the 1.9 billion was intended to replace some of the cash?

A. At that point in time, I had no idea what it was going to replace, the cash or what the -- I was just told take it in.

Q. Did at some later point in time you gain an understanding as to what that 1.9 billion was supposed to do?

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A. Much later on. Not up until during the period that we were purchasing the assets. Somewhere subsequent to that, I was never really sure whether it was related to the collateral on the repo or the purchase of the unencumbered assets. Because to me it was a block of assets. I didn't distinguish between the repo versus the unencumbered assets for my purposes because it didn't matter to me.

Q. You said much later in time. Are you thinking about a particular conversation that you had with someone?

A. No, I just know that somewhere down months later when we just, you know, probably had general conversations on it, that's when it probably came out. I can't say on a particular time or date or anything like that. I just know later on, you know, there was discussions about it.

Q. Do you recall who you had those discussions with?

A. No, just general conversations with somebody. I just don't know. I just know that -- I recollect that there were

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conversations on it.

Q. Conversations with people at Barclays?

A. Could have been Barclays or Lehman. I don't remember, to be honest. It could have been just rehashing it with Lehman people for -- I just don't remember. I just know that somewhere I had a conversation on it.

Q. When you say "Lehman people," are you talking about --

A. Ex-Lehman legacy people from the -- it could have easily been any one of them. I just don't recall.

Q. Can you recall about when you had these discussions?

A. I just know it was probably much later on, you know, only to the fact that I really wasn't focused on the population as much in terms of, you know, the reasons as to making accounting for it, making sure the trades were booked, the trades were settled, securities were moved. That was my focus.

Q. When you say "much later on," do you think this was a couple of weeks later or a couple of months later?

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A. It was probably more months later.

Q. The e-mail, just to clarify one thing in the e-mail, you write that, "On Friday, we received collateral worth 1.0077 million." Did you mean billion when you wrote that?

A. Yeah. I was getting a little punchy, I guess. Yeah, it was clearly a billion.

Q. And why are you passing this information along to Mr. LaRocca? Do you recall?

A. Not particularly, no.

Q. I'm going to mark 286A, another e-mail. This one is double-sided, Bates-numbered 49165 to 49166.

(Exhibit 286A, a document bearing Bates Nos. 49165 through 49166, marked for identification, as of this date.)
(Document review.)

A. Okay.

Q. The top e-mail is from you to a Stephen Sell?

A. Right.

Q. Who is Mr. Sell?

A. Stephen is a business manager for the

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Q. Were you talking to John Haley over that weekend?

A. I'm certain I was. John and I spent a lot of time back and forth together.

Q. Do you know if he had gone to the DTCC?

A. I don't know that to be fact. He could have, but I just don't know that. You know, he might have. I just can't recall that, to be honest.

Q. Did you hear anything over that weekend about whether Barclays was going to be purchasing unencumbered securities in the Lehman DTC accounts?

A. Not over that weekend, no.

Q. Did you hear that at a later point in time?

A. Months later. This goes back to that earlier discussion we had where, you know, when they asked about the securities that came in on the 19th as unencumbered securities, somewhere along those lines months later, that's where I became aware that we were buying those actual securities.

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those accounts. So there must have been either an unblocking or some mechanism that allowed us to get those securities through there.

Q. Do you know why Barclays was receiving securities from there on the 29th and the 30th?

A. No, I don't.

Q. Do you know whether those securities were part of the repo collateral?

A. I don't know that. I didn't think about it in those terms.

Q. Does your systems show -- would your systems show whether that was the case or not?

A. No. Well, the only thing our systems will show is that we purchased securities. We didn't book any trades as financing trades on an individual basis. So we wouldn't reflect that. All you'd reflect is in the depot that you received collateral from Lehman.

Once the trades were booked as outright trades, that's when we knew that, formal books and records, that we had trades and that we were looking for that collateral as proprietary positions now since we bought them outright.

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Q. You told me before that the DTCC put a hold on the trading from the Lehman box that Friday?

A. Yeah. Not trading from it, movements from it.

Q. Thank you.

Was that hold ever lifted, do you know?

MR. SHAW: Objection. Foundation.

A. I don't know to be certain, no, I don't know.

Q. Do you know if Barclays had to take any actions to get that hold lifted?

A. No, I don't know. There must have been. Well, let me qualify -- just restate that again. We received assets on the 29th and the 30th. They may have come through that account, so they may have been under the control of either SIPC or DTC or some other body to release those securities to us.

So I do know that at some point they may not have taken the block off, but they allowed securities to move through there because I do believe on the 29th and 30th they came to

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Q. Okay. Let's go back to the weekend of September 20th and 21st. Did you hear anything about an agreement over that weekend involving Barclays, LBI and the DTCC?

A. I don't understand the question.

Q. Do you know if there was an agreement reached over that weekend between Barclays, Lehman Brothers and the DTCC?

A. I don't know if there was agreements reached. There was dialogue about the clearing of the outstanding trades. I remember those -- that dialogue, but I don't know if that was -- there was -- I wasn't party to any agreement that was taking place at DTC or anything of that nature.

Q. Were you involved in those dialogues?

A. Yeah.

Q. Where did they take place?

A. They would have taken place at 745 Seventh Avenue.

Q. And who participated in these dialogues with you?

A. I don't remember, but I -- I just don't remember. I would assume people in legal

1 HIGHLY CONFIDENTIAL - J. RODEFELD
2 or somebody of that nature.

3 **Q. There was people there from --**

4 A. Barclays. Barclays Capital.

5 **Q. Is this just legal people at Barclays?**

6 A. Barclays Capital. At this point, it
7 was Barclays legal people.

8 **Q. Were there people from LBI or from the**
9 **Trustee?**

10 A. There were LBI people on the floor.
11 Whether they were in those conversations, I
12 don't believe so.

13 **Q. Are there people in those**
14 **conversations from the DTCC?**

15 A. There were DTC folks on the calls,
16 right? And so there were discussions about, you
17 know, were we going to clear the trades on
18 behalf of LBI, the outstanding trades that
19 hadn't settled yet at the depositories. So
20 there were discussions, you know, and we were
21 saying we're not settling those trades, they're
22 not our trades.

23 That's the extent of what I remember
24 about that. I don't think there was any formal
25 agreements, though, other than the fact that we

1 HIGHLY CONFIDENTIAL - J. RODEFELD
2 about DTCC bylaws when there's a default of any
3 sort.

4 **Q. Is the DTC exposed, mechanically**
5 **exposed if a trade doesn't settle?**

6 A. DTC is participant-owned. So DTC just
7 represents all the other participants. So, in
8 theory, if there's a loss at DTC, that is shared
9 amongst all the participants of DTC.

10 So, you know, if there is going to be
11 a, like in any kind of a corporate action where
12 DTC is involved in it, if there's a loss, it's
13 distributed out to all its members.

14 **Q. Okay. So --**

15 A. I'm not an expert on DTC bylaws, on
16 closeouts or bankruptcy or anything else like
17 that. I'm not an expert at all.

18 **Q. So over the weekend of the 20th and**
19 **the 21st, you are, at least for some of the**
20 **time, up at the Lehman headquarters at 745**
21 **Seventh Avenue?**

22 A. Correct.

23 **Q. Why are you up there?**

24 A. On the weekend of the 21st -- well, we
25 should start when I started going to the Lehman

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2 stated a position.

3 **Q. What is it, when you say you weren't**
4 **going to settle the trades, what do you mean by**
5 **that?**

6 A. So if Lehman sold securities to a
7 client and needed to make a delivery, we were
8 telling DTC we're not taking ownership of that
9 settlement process, that's Lehman's process. We
10 didn't -- we hadn't bought LBI at that point.
11 So, for our purposes, it's that why would we
12 take ownership of the settlement when we hadn't
13 taken ownership of those -- of the entity.

14 **Q. Did DTCC express any concerns about**
15 **those settlements?**

16 A. I don't know if they expressed
17 concern. They were looking for facts, right,
18 what we were doing.

19 **Q. What happens if the settlement fails?**

20 A. The trade doesn't just settle in the
21 system. The cash doesn't go one way. The
22 securities don't go another way.

23 **Q. Does the DTCC guarantee the settlement**
24 **of those trades?**

25 A. I don't know. I don't know enough

1 HIGHLY CONFIDENTIAL - J. RODEFELD
2 offices, right? And I started taking up camp
3 there because I went up there on that Thursday
4 when there was started to be a lot of confusion
5 in the morning, late morning hours about that
6 first lot that we were sending over in cash and
7 the collateral, so I decided to go to the Lehman
8 offices to make sure I was closer to talking to
9 the folks that I needed to get a hold of rather
10 than by phone.

11 And so at that point there, once I had
12 taken an office on the 31st floor, it was just a
13 matter of convenience a lot of times just going
14 back and forth between the Seventh Avenue office
15 and the 200 Park Avenue office of mine, so I
16 just needed a place to have a PC and work from
17 both place, no more, no less.

18 **Q. So at some point over the weekend**
19 **these discussions involving the DTCC people**
20 **begin. How do you get brought into those**
21 **discussions.**

22 A. I don't remember how I was brought
23 into the discussions, but I just know that I was
24 part of the discussions when there was queries
25 about the outstanding trades that Lehman had

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Q. Have you ever seen Exhibit 52 before?

A. Yes.

Q. When did you see it?

A. I'm sure I saw it at the period of time in September or October -- September, I guess, only because it's to my attention, and I, you know, vaguely remember something about this, but nothing in particular. It just looks familiar, to be honest with you. I don't know why, it just looks familiar.

Q. What, if anything, do you remember about it?

A. Nothing. Absolutely zero.

Q. Were you involved in negotiating this letter agreement?

A. No. I don't even understand enough about it, to be honest, what it even means.

Q. Did you attend any meetings where this letter agreement was discussed?

A. Unless this was part of the meetings that we had over that weekend where there were discussions about, you know, the clearing of the securities, I may have participated in those meetings, and if that translated into this

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document, you know, then -- then I was party to some of those meetings, yes.

The fact that they put it to my attention, you know, because I was part of those meetings or because I was the head of ops., I don't recall, but it could have been one of those two reasons.

Q. You don't know why it's to your attention?

A. No, other than the fact that, as the head of ops., and as being party to those discussions with a number of these people at DTCC on that weekend, that's the only thing I can think of is why they put it to my attention.

Q. Who at the DTCC did you talk to?

A. Specifically, I didn't talk to anybody, you know, that I can recollect, but I know on the call was Larry Thompson, and I believe Don Donahue was probably on those calls as well. And there might have been other people in the room from DTCC. Those are the two names, you know, that I remember.

Q. When you were on those calls, was there any consensus reached or resolution

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reached as to how the trades were going to be cleared?

A. Not on the calls that I participated in, there was no agreements. There were discussions about the MBSCC, how we -- the governments and so forth, but there was no resolution, I don't believe, that I was on that says, okay, we're going to go in this direction and that's the formal agreement or anything like that. I don't recall that.

Q. Is it fair to say that the only thing you do recall is what you told me before, is that Barclays was not going to be responsible for settling those trades?

A. Right, that was the only thing that I remember that sticks out in my mind from those conversations. Because it was such a prominent point to DTCC and there was more than one conversation on that subject, so that's why I remember.

I don't know if there were other reasons why we were on the call that might have been minor issues. There could have been. I just don't recollect. That was the only major

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issue I remember, being who's going to own the future settlements of the outstanding trades.

Q. Do you recall any discussions about whether Barclays would purchase any of the assets that were --

A. No, nothing along those lines.

Q. Did you hear any discussion about --

A. It was more -- it was all operational in nature. Settlement purposes, not execution purposes.

Q. Did you have an understanding that there were other discussions or meetings with the DTCC going on that you were not involved in?

A. There may have been, yeah. I would assume that there were other discussions going on that I wasn't party to. I just don't know specifically what they were or anything.

Q. If you take a look at the paragraph of the letter that's numbered number 1 that's in bold, "Winding Down of Accounts"?

A. Yes.

Q. The letter reads, "Barclays has indicated, and hereby agrees, that all of the accounts of LBI maintained at the clearing

1
2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----x
In Re: Chapter 11
5 LEHMAN BROTHERS Case No. 08-13555 (JMP)
HOLDINGS, INC., et al., (Jointly Administered)
6 -----)

7
8 * * * HIGHLY CONFIDENTIAL * * *

9 DEPOSITION OF GARY ROMAIN

10 New York, New York

11 Thursday, September 10, 2009
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17
18
19

20 Reported by:

FRANCIS X. FREDERICK, CSR, RPR, RMR

21 JOB NO. 24298
22
23
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25

Page 10	Page 11
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 are broadly three areas in which you are the</p> <p>3 30(b)(6) witness. One is to do with the OCC</p> <p>4 margin and values. The other has to do with</p> <p>5 what we refer to as Schedule A and Schedule B</p> <p>6 on the Asset Purchase Agreement, correct?</p> <p>7 A. Yeah.</p> <p>8 Q. And a third category were certain</p> <p>9 documents or spreadsheets that were prepared</p> <p>10 for Barclays auditors, right?</p> <p>11 A. Sure.</p> <p>12 Q. On the Schedule A, Schedule B</p> <p>13 issues who did you speak with to get ready for</p> <p>14 your 30(b)(6) deposition?</p> <p>15 A. The most significant conversations</p> <p>16 I had in preparation were with -- let me go</p> <p>17 through it -- with Sean Teague. With Stephen</p> <p>18 Callick. With Jerry Shi. With Lee Howell.</p> <p>19 With Ian Cooper.</p> <p>20 MR. SHAW: Let me just ask to</p> <p>21 clarify the question. Mr. Tambe's</p> <p>22 question involves specifically the</p> <p>23 subject of the Schedule A and Schedule</p> <p>24 B. Were your conversations you</p> <p>25 described on that subject or on other</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 subjects?</p> <p>3 THE WITNESS: In terms of just the</p> <p>4 Schedule A and Schedule B that would be</p> <p>5 the -- discussion I've had on Schedule A</p> <p>6 and Schedule B. I have to give this</p> <p>7 some thought.</p> <p>8 (Pause on the record.)</p> <p>9 A. Actually, those five. Schedule A</p> <p>10 and Schedule B would be just Sean Teague. The</p> <p>11 other four would relate to the third item, the</p> <p>12 OCC.</p> <p>13 Q. And on the auditor spreadsheets</p> <p>14 who did you speak to if anyone to get ready to</p> <p>15 testify on those topics?</p> <p>16 A. The auditor spreadsheets I didn't</p> <p>17 speak to anybody in particular because the --</p> <p>18 the two documents -- the two main documents,</p> <p>19 one of which was put together by myself so</p> <p>20 very little refreshing of memory was required.</p> <p>21 The other one I worked with</p> <p>22 consistently over the period. So, again, very</p> <p>23 little refreshing of my memory was required.</p> <p>24 Q. Did you read any deposition</p> <p>25 testimony that's been given in this matter to</p>
Page 12	Page 13
<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 get ready for your deposition?</p> <p>3 A. I read the deposition testimony of</p> <p>4 Patrick Clackson.</p> <p>5 Q. And did you speak with Mr.</p> <p>6 Clackson about his deposition testimony?</p> <p>7 A. No.</p> <p>8 Q. Did you speak with anyone else</p> <p>9 about Mr. Clackson's deposition testimony</p> <p>10 other than counsel?</p> <p>11 A. No.</p> <p>12 Q. You're currently employed by</p> <p>13 Barclays, correct?</p> <p>14 A. That's correct.</p> <p>15 Q. And in what position?</p> <p>16 A. I'm head of technical accounting</p> <p>17 and private equity finance for Barclays</p> <p>18 Capital.</p> <p>19 Q. And how long have you been at</p> <p>20 Barclays?</p> <p>21 A. Just over five years.</p> <p>22 Q. And before that where were you?</p> <p>23 A. I was at Deloitte for nine years</p> <p>24 prior to that.</p> <p>25 Q. And do you hold any professional</p>	<p>1 G. ROMAIN - HIGHLY CONFIDENTIAL</p> <p>2 certifications from any accounting bodies</p> <p>3 anywhere in the world?</p> <p>4 A. I'm an ICA so the English and</p> <p>5 Welsh Institutional Chartered Accountant.</p> <p>6 Q. Last September 2008, did you have</p> <p>7 the same position that you have now?</p> <p>8 A. I did, yes.</p> <p>9 Q. Describe generally for me in the</p> <p>10 time period of, say, August, through December</p> <p>11 of 2008, broadly, what role you played in</p> <p>12 connection with the Lehman acquisition.</p> <p>13 A. Sure.</p> <p>14 Q. So starting in August.</p> <p>15 A. Yeah. In August I was involved in</p> <p>16 an exercise placed on the published financial</p> <p>17 information for Lehman to try to come up with</p> <p>18 a picture of what the accounts of combined</p> <p>19 Barclays and Lehman might look like. Barclays</p> <p>20 and Lehman use different sets of accounting</p> <p>21 rules so the primary purpose of my involvement</p> <p>22 was to try to eliminate those differences. I</p> <p>23 was then involved -- well, let's give a time</p> <p>24 line. So Friday the 13th of September --</p> <p>25 Q. It's the 12th of September.</p>

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A. Friday, the 12th of September. I became aware that some people were heading over to New York in relation to a potential deal with Lehman. I was called onto a conference call in the early hours of Saturday the 13th of September with Marie Stewart who was my equivalent at Lehman, Lehman Brothers. So the head of their technical accounting department. Really to try to augment my understanding. Because obviously during August we only had access to published financial information. So to augment my understanding by talking to somebody who had a greater understanding of their accounting policies and how they feed into their financial statements.

I then flew to New York on the afternoon of Saturday, the 13th. When I arrived it would have been early evening and I was advised that the deal which was being considered was no longer proceeding. A few hours later I was called into the office by Patrick Clackson. He had a few questions in relation to a deal which may be resurrected at

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that time. I didn't have any details of the transaction that we were looking at but he had a couple of accounting questions which I answered for him.

The next time that I had involvement was -- it would have been mid-morning on Monday, the 15th, when I and a number of others headed across to the Lehman headquarters at -- on Seventh Avenue with the understanding that there was a deal which was now being pursued. And I spent the next 24 to 30 hours I guess over there. I can't remember exactly when I left but it would have been probably early afternoon Tuesday. During that period I was providing support to -- well, to Patrick Clackson and through him to a number of individuals were involved in the negotiations at that time. That assistance was -- some of it was administrative, just pulling together documents, copying them, and providing them to them. Other was liaising with a number of Lehman staff to try to get a number of information that they were asking -- Barclays executives were asking for.

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Q. Let me stop you there.

A. Sure.

Q. So you're on the Monday/Tuesday of the week of the bankruptcy.

A. That's right.

Q. You've described some of the support you were providing Mr. Clackson and others those two days.

Is it fair that on that Monday/Tuesday you were not involved in negotiating any aspect of the transaction?

A. That's correct. I wasn't involved in any of the negotiations.

Q. Were you doing any valuation exercises of Lehman's assets on the Monday/Tuesday?

A. No, I was not.

Q. Were you aware that there were valuation discussions taking place between Barclays and Lehman on that Monday/Tuesday?

A. I was aware that valuation was an element of the conversations which were going on. But I wasn't involved in discussions themselves.

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Q. What if anything do you recall about the nature of the valuation discussions that you understood were taking place?

A. I don't really have any understanding of the nature.

Q. All right. So let's carry on back with the time line. You were talking about Monday/Tuesday. Carry on.

A. Sure. So from that period onwards the main task which was given to me was to look towards our accounting treatment and eventual disclosure of the transaction. So over the next period of -- well, from then right through till shortly before our financial statements were published in February I had and maintained the acquisition balance sheets which was -- until just before it was published was in the form of an Excel spreadsheet which was summarizing the balance sheet which needs to be disclosed in our financial statements in the 6-K. That was a working document through that period of the time line.

Q. Okay. On that Monday/Tuesday of

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that week, the week of the 15th, were you involved in reviewing or preparing any materials for the board of directors of Barclays?

A. I was not involved in reviewing or preparing any.

Q. Okay. Did you -- okay. We're just going to pull an exhibit and I'll discuss that with you.

A. Sure.

(Pause on the record.)

Q. Sir, I've placed before you a document that's previously marked as Exhibit 377A.

A. Um-hum.

Q. It has the Bates numbers BCI-EX-115843 through -846.

A. Um-hum.

Q. Is that the final Excel version of the acquisition balance sheet, sir?

A. Yes. That's correct. It's -- sheets 844 and 845 are the final Excel -- well, 845, 845 and 846 are the final Excel versions of the acquisition balance sheet.

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843 was and is the same information which is put into a form appropriate for disclosure because Barclays' balance sheet have a prescribed format and the items in the acquisition balance sheet needed to be appropriately allocated amongst those balance sheet categories for disclosure.

Q. And so the acquisition balance sheet, the Excel version, the -44, -45 and -46, that's the document you were describing before which was an evolving document which finally rolled up to the disclosure document which is the first page of the exhibit; is that fair?

A. It's fair. To expand, when you say final, it was final in that it was the version which was disclosed in our 2008 financial statements. Under the regulatory accounting standards you have until twelve months after the acquisition to finalize your initial accounting for an acquisition. That anniversary hasn't quite passed yet and, therefore, this is not final until we declare our accounting disclosed.

Page 20

Page 21

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Q. And as you sit here, are you aware of any adjustments or changes you expect to make on the one-year anniversary?

A. We don't expect to make any changes.

Q. And we'll come back to 377A later in the examination.

A. Sure.

(Deposition Exhibit 388A, document bearing production number BCI-EX-(S)-000520127 with attachment, marked for identification as of this date.)

BY MR. TAMBE:

Q. Sir, I've placed before you a document marked as 388A. It's a cover e-mail and what looks like a Powerpoint document attached to it. Please take a moment to review it and let me know when you're done and I'll ask you some questions.

(Document review.)

Q. Sir, have you had a chance to review it, sir?

A. I have, yes.

G. ROMAIN - HIGHLY CONFIDENTIAL

Q. Okay. And you'll see the cover e-mail is an e-mail from Marie Stewart and you referred to her earlier, correct?

A. That's right.

Q. She was your counterpart at Lehman.

A. That's correct.

Q. And this is a cover e-mail addressed to you and looks like others at Barclays; is that correct?

A. Yes. That's correct.

Q. Who's Chris Weidler and Charles Utley?

A. Chris Weidler, he works in finance based in London. His title is head of financial reporting. European head of financial reporting. Charles Utley is the US regional head of technical accounting based in New York.

Q. And the document that's attached to this e-mail from Marie Stewart to you, was that a document you had requested that she provide you?

A. I don't recall receiving this

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2 document. I do recall Marie Stewart sending a
3 number of documents to me during the process
4 from Saturday on for the next couple weeks. I
5 don't recall requesting or subsequently using
6 this document.

7 Q. And having skimmed through the
8 document, do you have an understanding of what
9 the document is?

10 A. I have an understanding that it
11 is -- it is the sum -- it's the summary of
12 some exercise to fair value elements of the
13 Lehman Brothers business. That's what it
14 seems to be.

15 Q. The e-mail from Marie Stewart is
16 dated the 13th of September. The Saturday,
17 correct?

18 A. Yeah.

19 Q. And that's the day you flew over
20 from London to New York to join your
21 colleagues here.

22 A. Yeah.

23 Q. The transaction that was being
24 contemplated over that weekend, was that an
25 acquisition of the entirety of Lehman's

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2 business?

3 A. The transaction that -- my
4 understanding of the transaction which I was
5 informed had not been proceeded with when I
6 left on Saturday was an acquisition of the
7 Lehman business. That was my understanding.
8 But I wasn't involved in those discussions so
9 it's only an understanding.

10 Q. And was it your understanding --
11 do you have an understanding what this e-mail
12 from Marie Stewart to you was in connection
13 with that contemplated transaction?

14 A. No, I don't.

15 Q. Do you recall using the attachment
16 to that e-mail for any purpose?

17 A. No.

18 (Deposition Exhibit 389A, document
19 bearing production number
20 BCI-EX-(S)-00052084, marked for
21 identification as of this date.)

22 BY MR. TAMBE:

23 Q. Sir, I've placed before you a
24 one-page document marked Exhibit 389A. Take a
25 moment to review it and let me know when

Page 24

Page 25

1 G. ROMAIN - HIGHLY CONFIDENTIAL
2 you're done.

3 A. Sure. Yeah.

4 Q. You'll recognize this as an e-mail
5 from Mr. Clackson to you and many other folks
6 at Barclays.

7 Do you see that?

8 A. Yeah.

9 Q. Is Mr. Clackson someone you report
10 to directly?

11 A. No, I report -- well, are you
12 asking now or at that time?

13 Q. Let's ask back then.

14 A. Back then I was reporting to Hugh
15 Shields who reported to Patrick Clackson.

16 Q. And now?

17 A. And now I report to Mark Merson
18 who reports to Patrick Clackson.

19 Q. You'll see in Mr. Clackson's
20 e-mail, the second paragraph states, "We
21 nearly got there and the value created by the
22 deal would have been an incredible
23 \$25 billion."

24 Do you see that?

25 A. I do, yeah.

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2 Q. Did you have any discussions with
3 anyone over that weekend about the value of
4 Lehman transaction, the deal that was being
5 contemplated?

6 A. No, I didn't.

7 Q. And just in orders of magnitude
8 the value of \$25 billion, do you have any idea
9 how that compares to the value of the Lehman
10 operations that were contemplated being
11 acquired that weekend?

12 A. No, I don't know.

13 Q. You told us that on Monday, the
14 15th, you learned that a potential transaction
15 with Lehman possibly was back in
16 consideration, correct?

17 A. That's correct.

18 Q. And who did you hear that from?

19 A. I heard that from James Walker who
20 was the CFO of the Americas at the time.

21 Q. At Barclays.

22 A. At Barclays Capital.

23 Q. And what were you told about the
24 nature of the contemplated transaction on
25 Monday, the 15th?

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A. At that time very little. I was essentially providing support to a group of people that were negotiating to make a deal. But I wasn't involved in the negotiation of the deal directly. So my involvement was much more limited to the information I was providing at that time.

Q. Was it your understanding either on Monday or in the subsequent days that the transaction that was being contemplated was a purchase of select assets from Lehman Brothers?

A. Yes.

Q. Did you have an understanding as to whether Barclays was negotiating the value at which it would be purchasing those assets from Lehman Brothers?

A. I didn't have an understanding of the negotiations as involves those terms, no.

Q. At any time, has it been your understanding that Barclays purchased assets from Lehman at a value other than the book value at which those assets were being carried by Lehman?

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A. Sorry. I'm not sure I understand the question.

Q. Lehman had a series of assets that it carried at some value on its books, correct?

A. Yeah.

Q. Is it your understanding -- has it ever been your understanding, that Barclays purchased some selection of those assets at values other than the book values at which Lehman carried those assets?

A. I didn't have an understanding of a transaction whereby we were purchasing certain assets at a particular value. I had an understanding of the assets that were being purchased which grew over time and I have an understanding of the amount of consideration which was being paid as being elements of the deal. But in terms of the relationship between the two, I wasn't involved in the discussions as to how those terms were arrived at.

Q. In connection with the Lehman transaction, did anyone ever use the phrase

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"block discount"?

A. I don't recall anybody using the phrase.

(Deposition Exhibit 390A, document bearing production numbers BCI-EX-(S)-00023761 through BCI-EX-(S)-00023762 with attachment, marked for identification as of this date.)

BY MR. TAMBE:

Q. Sir, I've placed before you a multi-page document marked Exhibit 390A. Take a moment to review the document. It's a cover e-mail, a placeholder sheet, and then a small spreadsheet. Let me know when you're done.

(Document review.)

A. Okay, yeah.

Q. All right. The cover e-mail, at least the e-mail address block states it's from Tom McCosker to several people at Barclays but you recognize this as an e-mail that you sent, correct?

A. That's right.

Q. You were sending it from Tom's

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e-mail box.

A. Absolutely.

Q. The spreadsheet that's attached to the cover e-mail, could you tell us what that is?

A. Well, that is -- that was a very preliminary summary of assets and liabilities which was put together into a balance sheet format and I was asked to send to the people in the "to" box there.

At the time I sent the e-mail I was at the -- I was on the 31st floor of 745 providing support to Patrick and the negotiators. I was provided with these numbers as being numbers to put into that format and sent.

Q. In your cover e-mail you'll see a reference to the PC used was installed with an updated version of Excel.

Do you see that?

A. Yeah.

Q. Was that a Lehman PC that you were using to create this?

A. No. It was a Barclays laptop that

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2 we'd taken across.

3 Q. On your acquisition summary, the
4 third page of the exhibit, the calculation
5 there begins with the line item that states
6 Inventory Carrying Amount.

7 Do you see that? 64 billion?

8 A. I do, yes.

9 Q. Where did that number and the
10 other numbers on the sheet come from?

11 A. I don't recall who provided them
12 to me. At that stage I wouldn't have been
13 involved in any of the underlying work so I
14 was provided with those numbers to send and at
15 that time, the 16th of September, would have
16 obviously been very preliminary numbers.

17 Q. And the next line item on that
18 page, the third page of 390A, is Inventory
19 Valuation Adjustment.

20 Do you see that?

21 And that's a negative \$3.5 billion
22 number.

23 A. Yeah.

24 Q. Right. Do you know what that's a
25 reference to?

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2 A. I don't, no.

3 Q. If you look on your cover e-mail
4 that you sent you refer to that \$3.5 billion
5 adjustment as a writedown.

6 Do you see that?

7 A. I do, yeah.

8 Q. Was it your understanding that the
9 carrying value of these assets was being
10 written down by Barclays in calculating this
11 acquisition summary?

12 A. At that time I didn't have enough
13 information to have a real sense.

14 Q. You had on the liability section a
15 bonus accrual item of 1.3 billion.

16 Do you see that?

17 A. Yeah.

18 Q. And, again, do you know the source
19 of that number?

20 A. I don't, no.

21 Q. I'm sorry if I've already asked
22 you this. Who was providing you with these
23 numbers?

24 A. I don't recall who provided me
25 with those numbers precisely. It would have

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2 been somebody that was involved in the process
3 but I couldn't pinpoint to it an individual.

4 Q. And, again, I'm just trying to
5 understand the exercise that was going on when
6 this sheet was prepared.

7 A. Sure.

8 Q. You had an Excel spreadsheet
9 opened and someone was giving you assets and
10 liabilities to put into a balance sheet, a
11 rudimentary balance sheet; is that right?

12 A. That's correct.

13 Q. Sir, I've handed you a document
14 that was previously marked as Exhibit 378.
15 It's a covering e-mail, a placeholder sheet,
16 and then a Powerpoint presentation. Take a
17 moment to review the document and please let
18 me know when you're done.

19 (Document review.)

20 A. Okay.

21 Q. The attachment to the cover
22 e-mail, the Powerpoint document, have you seen
23 that document before today, sir?

24 A. I've seen it in preparation for
25 the deposition. If it's -- or if not this

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2 one, something which looks very similar to it.

3 Q. Just keep that document in front
4 of you. I'm marking another exhibit.

5 A. Um-hum.

6 (Deposition Exhibit 391A, document
7 bearing production numbers
8 BCI-EX-001766522 through
9 BCI-EX-001766536, marked for
10 identification as of this date.)

11 BY MR. TAMBE:

12 Q. Sir, I've had placed before you a
13 document marked 391A. Please take a look at
14 it. It's also a Powerpoint presentation with
15 a similar title to Exhibit 378.

16 Is that the document you reviewed
17 in preparation for the deposition?

18 MR. SHAW: I note that there
19 appear to be multiple documents here.

20 A. Are these identical?

21 Oh, no. This one has some
22 scribbles on it.

23 They look very, very similar so
24 I'm not sure.

25 Q. And just as a housekeeping matter,

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2 the last three pages of the exhibit, I think
3 we can just extract. It's a different form of
4 document. It look like a memo.

5 A. Oh, okay.

6 Q. You can just pull those right off.

7 A. Sure.

8 Q. So the exhibit will just be the
9 Powerpoint presentation.

10 A. Okay.

11 Q. So looking at the Powerpoint
12 presentation it appears to be on a quick
13 summary similar to the document that's
14 attached to Exhibit 378 except for some
15 handwritten scribbles; is that right?

16 A. It appears to be, yes.

17 Q. Are those your handwritten
18 scribbles there?

19 A. No. That's not my handwriting.

20 MR. TAMBE: I could ask counsel.
21 We received this collection of documents
22 I believe yesterday. Is that right,
23 Terry?

24 MR. McMAHON: Right.

25 MR. TAMBE: Whose files did these

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2 documents come from?

3 MR. SHAW: If it's what I think it
4 is, then this was from a collection of
5 hard copy documents that Mr. Romain had.

6 MR. TAMBE: Okay.

7 BY MR. TAMBE:

8 Q. Is that fair, Mr. Romain? Was
9 that a collection of hard copy documents that
10 you turned over to your counsel?

11 A. Yes, that's true.

12 Q. And it's possible that in that
13 collection of hard copy documents were
14 documents with other people's handwriting on
15 them?

16 A. Yes.

17 Q. And you wouldn't know whose
18 handwriting this is on Exhibit 391A; is that
19 fair?

20 A. No, no.

21 Q. Do you understand the nature of
22 the handwriting? I believe you're looking at
23 page 5 of the Powerpoint.

24 A. I'm looking at page 5. No, I'm
25 not aware of what the amendments were there

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2 for.

3 Q. If you look at that column that
4 states New Transaction Included Gross, do you
5 see that column?

6 A. I do, yes.

7 Q. That column totaled up to
8 75.3 billion?

9 Do you see that?

10 A. I do, yeah.

11 Q. And the heading on this Powerpoint
12 page states total assets and new transaction
13 are 75 billion.

14 Do you see that?

15 A. I do.

16 Q. Any understanding as to where that
17 number comes from, the \$75 billion number?

18 A. No, I don't. There were multiple
19 spreadsheets circulating around that time as
20 the nature of the deal and information changed
21 around that time and subsequently. So I
22 wouldn't know -- I wouldn't know what set of
23 numbers these were drawn from. But given the
24 date they would certainly have been very
25 preliminary numbers.

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2 Q. And looking at this exhibit,
3 Exhibit 391A, if you turn to the second page
4 of the exhibit -- yeah, that's the one.

5 It states Project Long Island
6 Board Discussion Materials.

7 Do you see that?

8 A. I do.

9 Q. And do you understand these were
10 materials prepared for discussion at a board
11 of directors meeting at Barclays?

12 A. I don't know that.

13 Q. Well, if you turn to the next
14 page, page 2 of the presentation, the very
15 last point on that page states, "We are
16 seeking board approval for the transaction and
17 to issue 612 million Barclay shares."

18 Do you see that?

19 A. I do.

20 Q. Does that help your understanding
21 that this was prepared for the board of
22 directors meeting for Barclays?

23 A. I don't know that.

24 Q. Did the \$75 billion number we were
25 talking about a few minutes ago, are you aware

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2 of any other description of the assets to be
3 purchased being provided to the board of
4 directors on or around the 16th of September?

5 A. I wasn't involved in the provision
6 of materials to the board.

7 (Deposition Exhibit 392A, document
8 bearing production numbers
9 BCI-EX-(S)-00023813 through
10 BCI-EX-(S)-0023814, marked for
11 identification as of this date.)

12 BY MR. TAMBE:

13 Q. Sir, I've handed you a two-page
14 document marked 392A. It's an e-mail chain.
15 Take a moment to review it and let me know
16 when you're done.

17 (Document review.)

18 A. Okay.

19 Q. You'll see the cover e-mail, the
20 first e-mail at the top of the page, the first
21 page of Exhibit 392A, is someone from called
22 Vivek Syal?

23 A. Um-hum.

24 Q. To you and then c.c.'d to others.
25 Do you see that?

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2 A. Yes.

3 Q. Who is Vivek Syal?

4 A. He works for Barclays Capital but
5 are you asking for what role he would have
6 been performing at that time?

7 Q. If you know, yeah.

8 A. I can't recall the exact title.
9 He was -- he was a member -- a function which
10 I would describe as similar to investor
11 relations, but Barclays Capital rather than
12 Barclays Group.

13 Q. And you'll see that Vivek is
14 forwarding you an e-mail which has a
15 calculation in it.

16 Do you see that?

17 A. Yes.

18 Q. And the e-mail that's being
19 forwarded to you, and you were a c.c. on that
20 original e-mail as well, begins with the
21 following phrase: "Following the numerous
22 e-mails on people trying to reconcile the
23 75.3 billion pound in the board dec and in
24 particular wanting to understand the
25 19.9 billion in the board dec..." and then it

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2 goes on.

3 Do you recall on or about the 16th
4 being involved in any discussions about
5 reconciling numbers in the board dec?

6 A. I recall this e-mail, certainly.

7 Q. Okay. So what do you recall about
8 this e-mail?

9 A. I recall that Bill was trying to
10 reconcile a set of numbers he had and we had a
11 conversation. I don't recall the entire
12 content of that conversation. But essentially
13 during that period the numbers -- people's
14 understanding of the numbers on the 16th and
15 subsequent to that, was changing over time.
16 And I was trying to help Bill to track down
17 where the number that he was referring to may
18 have come from.

19 In terms of the source of the
20 information which is included here, I don't
21 know where -- I don't know where those numbers
22 would have come from.

23 Q. And what you're referring to are
24 the numbers in Bill Castell's e-mail, the
25 asset and liability numbers, the other

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2 calculations, correct?

3 A. Precisely.

4 Q. Were you ever able to answer his
5 question as to reconciling the 75.3 billion
6 number?

7 A. I don't recall.

8 Q. Did you ever conclude that that
9 was an incorrect number?

10 A. The numbers which were circulated
11 for a variety of purposes between a number of
12 people during that period were based on
13 preliminary estimates and people's best
14 understanding of numbers. So I wouldn't use
15 the word incorrect. I would say that the
16 numbers -- the appropriate numbers for the
17 deal changed over time for a variety of
18 reasons until we ended up with the numbers
19 that were disclosed in our annual report.

20 Q. Were you involved at all in
21 calculating any of the numbers that were
22 disclosed to the Street in the analyst call
23 that was held on the 17th of September?

24 A. I don't recall any direct
25 involvement. I may have answered questions

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2 from people who were involved in that. But it
3 would be difficult to say more than that.

4 Q. And certainly when Barclays was
5 speaking to the Street on the 17th, Barclays
6 would have made an effort to be accurate in
7 its description of the transaction, correct?

8 A. Because I wasn't involved in the
9 conversation, I think I probably -- I don't
10 have a great understanding of what the form
11 and requirements are for those type of
12 announcements. So I wouldn't want to comment
13 inaccurately.

14 Q. Okay. Well, I would expect
15 accuracy to be one of the requirements,
16 correct?

17 A. I would expect that -- I would
18 expect faithful representation. Accuracy is a
19 term which is difficult to find when -- based
20 on provisional information.

21 Q. Do you have any understanding of
22 the headings Gross and Net as they're used in
23 that calculation that's provided by Mr.
24 Castell to you and others?

25 A. No. I -- no, I don't know what

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2 those columns specifically represented, no.

3 Q. But if you just follow the math,
4 it appears that on a line-by-line basis there
5 is a gross number, there's a parenthetical
6 which appears to be a deduction, and then a
7 net number.

8 Do you see that?

9 A. I do.

10 Q. Okay. And this is all in the
11 section titled FV Inventory.

12 A. Yes.

13 Q. And you recognize that as fair
14 value inventory?

15 A. Yes.

16 Q. Do you have any understanding as
17 to why, on or about the 16th of September,
18 these adjustments were being made to the gross
19 valuation numbers?

20 A. No, because I don't have a sense
21 of what the gross column represents. I don't
22 have a sense of what might be deducted or why.

23 Q. If you flip over to the next page,
24 at the top of the page there's two lines. One
25 line simply means minus and there's a negative

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2 1.5 number.

3 Do you see that?

4 A. I do.

5 Q. And then there's a little asterisk
6 that states Unallocated Deduction. Not
7 assigned to a specific asset class.

8 Do you see that?

9 A. Yeah.

10 Q. And, again, were you aware on or
11 around the 16th of a roving unallocated
12 deduction to fair value?

13 A. No.

14 Q. This calculation rolls up to a
15 negative goodwill number of 3 -- I presume
16 billion -- pretax.

17 Do you see that?

18 A. Yeah.

19 Q. What is negative goodwill?

20 A. Goodwill, positive or negative, is
21 an accounting concept which is calculated as
22 the difference between net assets acquired and
23 consideration paid in an acquisition.

24 Q. So if you were going to calculate
25 a gain on acquisition you would need to

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2 calculate the negative goodwill; is that
3 correct?

4 A. If you were to put together the
5 accounting for an acquisition you would
6 calculate -- you would calculate goodwill, and
7 depending on whether the goodwill is positive
8 or negative, the treatment would differ. If
9 goodwill is negative it would be included in
10 the income statements as a profit.

(Deposition Exhibit 393A, document
bearing production numbers
BCI-EX-(S)-00052197 through
BCI-EX-(S)-00052198, marked for
identification as of this date.)

BY MR. TAMBE:

17 Q. Sir, just before we go on to the
18 exhibit that's been placed before you I just
19 want to make sure I understood your last
20 answer.

21 A. Sure.

22 Q. I believe you said if goodwill is
23 negative it would be included in the income
24 statement as a profit; is that right?

25 A. For accounting purposes; that is

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2 correct, yes.

3 Q. All right.
4 Sir, I've placed before you a
5 two-page document marked 393A. It's a cover
6 e-mail and a spreadsheet. Have you had a
7 chance to review the document?

8 A. I have, yes.

9 Q. The attachment, do you have an
10 understanding of what that attachment is?

11 A. It's a schedule which I did see at
12 the time which was produced by Lehman, I
13 believe. Yeah.

14 Q. If you'd have Exhibit 392A in
15 front of you. If you turn to page 2 of
16 Exhibit 392A, that's the calculation from Bill
17 Castell that we were looking at a few minutes
18 ago. That has a total asset number of 72.05.

19 Do you see that?

20 A. Yeah.

21 Q. And the spreadsheet in
22 Exhibit 393A has an Adj. total assets of
23 72.65.

24 Do you see that?

25 A. I do.

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2 Q. Do you have any understanding in
3 Exhibit 393A what the nature of the adjustment
4 is that's referred to in Adj. total assets?

5 A. No, I don't.

6 Q. And in Exhibit 393A which is the
7 Lehman-prepared document you testified about,
8 the Pure Payment and Comp Payment under
9 Liabilities, did you have an understanding on
10 the 16th what the source of those numbers was?

11 A. No, I didn't.

12 Q. As you sit here, do you know where
13 those numbers came from on the 16th?

14 A. No, I don't.

15 Q. Was it your understanding that
16 those numbers were inserted there to balance
17 out this balance sheet?

18 A. No. I don't have any
19 understanding of the source of any of the
20 numbers on the spreadsheet.

21 (Deposition Exhibit 394A, document
22 bearing production numbers
23 BCI-EX-(S)-00052200 through
24 BCI-EX-(S)-00052201, marked for
25 identification as of this date.)

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2 BY MR. TAMBE:

3 Q. Sir, I've placed before you a
4 two-page document marked Exhibit 394A. Take a
5 moment to review it and let me know when
6 you're done.

7 (Document review.)

8 A. Okay.

9 Q. And you'll recognize at the top of
10 this exhibit, there's an e-mail exchange at
11 the top, the first page, and the top e-mail is
12 from James Walker to you and others.

13 Do you see that?

14 A. Yes.

15 Q. And the attachment is a marked-up
16 portion of what appears to be a balance sheet.

17 Do you see that?

18 A. Yes.

19 Q. Do you have an understanding as to
20 what this document is and what the handwritten
21 notations are?

22 A. My understanding is that this was
23 another version of a representation of assets
24 and liabilities based on information at the
25 time. It's clear that we were trying to tie

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2 this out to some other document. During that
3 week there were many exercises of this nature
4 as understanding of the transaction and its
5 component parts changed.

6 So that was part of that ongoing
7 process.

8 Q. Any idea as to what you're trying
9 to tie this spreadsheet out to?

10 A. No.

11 Q. And is this your handwriting on
12 the second page of the exhibit?

13 A. No.

14 Q. 394A?

15 A. No.

16 Q. Do you know whose handwriting it
17 is?

18 A. I don't know.

19 (Deposition Exhibit 395A, document
20 bearing production numbers
21 BCI-EX-(S)-00052268 through
22 BCI-EX-(S)-00052270, marked for
23 identification as of this date.)

24 BY MR. TAMBE:

25 Q. Sir, I've placed before you a

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2 three-page document marked Exhibit 395A. Take
3 a moment to review it and let me know when
4 you're done.

5 (Document review.)

6 A. Okay.

7 Q. Now, this is an e-mail you'll see
8 from Bill Castell to several folks at Barclays
9 and other places.

10 Do you know what the purpose of
11 that this e-mail was? I see addresses here
12 for db.com. I assume that's deutschebank.com?

13 A. I don't know the people but db.com
14 is the standard e-mail ending for Deutsche
15 Bank, yes.

16 I don't have an understanding as
17 to the purpose for this.

18 Q. Okay.

19 A. It implies that there was a call
20 so...

21 Q. And there's a reference to an 0745
22 DD call. Does that have any meaning to you?

23 A. No. DD could mean a number of
24 things. I'm not sure.

25 Q. Okay. And this e-mail from Bill

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2 Castell has another calculation of total
3 assets, total liabilities.

4 A. Um-hum.

5 Q. Do you know where these numbers
6 come from?

7 A. No. No, I don't know where he got
8 them from.

9 Q. Were you ever a participant in
10 discussions with analysts about this
11 transaction? External analysts about the
12 Lehman Barclays transaction?

13 A. No.

14 Q. In the week of the 15th, do you
15 recall discussions about how and where the
16 assets that were being acquired were going to
17 be booked? And by where I mean what entity.
18 What legal entity.

19 A. During that week I don't recall
20 any discussions along those lines, no.

21 Q. Okay. Subsequent to that week, do
22 you recall any discussions about how and where
23 the assets were going to be booked?

24 A. Yes. Yes, there were numerous
25 discussions around entity allocations within

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2 Barclays group, over the next period of time.
3 I'm not sure exactly how long.

4 Q. And what you refer to as entity
5 allocations, what drove the decision as to
6 what entity was selected for allocating
7 particular assets?

8 A. I don't think there was a single
9 determining factor. As with any decision of
10 that nature you'd be considering a number of
11 things like infrastructure that was present in
12 the various entities. Capital. The normal
13 activities of the entities. These are issues
14 of a type which I would expect to feed into
15 it. But at a time which I recall being raised
16 at one time or another.

17 Q. How about tax considerations?

18 A. Tax considerations as well, yes.

19 Q. So that would be a fourth. It
20 wasn't included in one of the three you
21 mentioned.

22 A. They were examples.

23 Q. So let's make sure we covered all
24 the possible reasons why you might choose to
25 allocate in one entity versus another. You

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2 mentioned infrastructure. You mentioned
3 capital, by which I assume you mean regulatory
4 capital requirements?

5 A. Primarily. Yeah, it would seem to
6 be encapsulated in regulatory capital.

7 Q. Then you talked about normal
8 activities. So I guess you were allocating
9 the assets to entities that's consistent with
10 their normal activities. Is that what you
11 mean?

12 A. Yes.

13 Q. And then another consideration
14 would be tax.

15 A. Yes.

16 Q. You want to minimize the tax
17 burden on the enterprise as a whole; is that
18 right?

19 A. Well, I don't work in the tax
20 department so I wouldn't be able to say the
21 tax minimization is always the primary reason.
22 But tax considerations I would expect to be
23 considered -- I wouldn't be able to represent
24 that list of four generic categories as an
25 exhaustive list clearly.

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Q. In connection with the Lehman/Barclays transaction and the allocations of assets to particular Barclays entities, can you identify any other reason for the allocation other than these four that we've discussed?

A. Not off the top of my head, no.

MR. TAMBE: Let's just take a short break and we'll continue.

THE WITNESS: Sure.

(Recess taken.)

BY MR. TAMBE:

Q. Sir, I've placed before you a document that was previously marked as Exhibit 283A. It's a somewhat long e-mail chain. So if you want to start from the back and read your way up to the front, let me know when you're done and I'll ask you some questions.

(Document review.)

A. Okay.

Q. This e-mail chain, Exhibit 283A, starts off with an e-mail from you at the top to Caroline Owen and others.

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Do you see that?

A. Yeah.

Q. And you're asking for a coordinated approach on how assets are brought onto the Barclays balance sheet, correct?

A. Yeah.

Q. In your second paragraph of your e-mail you state, the second sentence, "I've heard nothing about an SPV plan and generation of gain in PLC..."

And then the sentence goes on.

A. Yeah.

Q. One, what did you mean by SPV plan?

A. There's a reference in Mark Rudduck's e-mail two down about potential sale to an SPV which is responding to a reference in Beatrice Montaudy's preceding e-mail of a plan to acquire assets through an SPV of Barclays.

Q. Do you recall --

A. At all times -- what I was saying there was that I hadn't heard about it and that if there were discussions on it that the

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broader finance needs to be involved.

Q. Do you recall having had discussions with any of these people who are on this e-mail chain about an SPV plan?

A. No, I'm not sure what plan Beatrice would have been talking about at that time.

Q. And the other phrase you use in your e-mail was generation of gain in PLC.

Do you see that? It's in your e-mail, the first e-mail.

A. Yeah.

Q. And when you refer to PLC you're talking about Barclays Bank PLC, correct?

A. Yeah. I'm referring back to Beatrice's e-mail where she identifies the plan as being to acquire through SPV of BBPLC and sell to BCSl to recognize a gain in BBPLC. So I was -- I was saying I didn't know anything about such a plan.

Q. Just so I get through the abbreviations, BBPLC is just Barclays Bank PLC, right?

A. That's correct.

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Q. And BCSL is?

A. It's Barclays Capital Securities, Ltd. I'm 99 percent sure that's the name of it.

Q. Okay. And both the PLC and the limited company are non-US companies, correct?

A. They are both UK companies.

Q. Okay. And your reference or the reference to recognition of gain --

A. They're both UK companies. That's not to say that US operations and assets are not owned by those. So, for example, BBPLC does have a New York branch.

Q. And apart from those two entities, you also have a US broker/dealer entity, correct?

A. That's correct.

Q. And what's the name of that entity?

A. Barclays Capital, Inc. I think is -- BCI is its normal reference.

Q. And if you go to the third page of Exhibit 283A, that's an e-mail from Beatrice Montaudy, Mark Rudduck, and Jasen Yang.

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Do you see that?

A. Yes.

Q. And she makes a reference in there to the 46 percent marginal tax rate applicable to BCI.

Do you see that?

A. Yes.

Q. And so that's the US tax rate applicable to the US broker/dealer, correct?

A. That's how I'd read the sentence. I don't have a particular detailed knowledge of the tax regimen.

Q. In that same sentence, earlier in that sentence she makes a reference to the following: "It was essential to the valuation calculation that the 'discount' between the value of the assets acquired and the purchase price not be subject to the 46 percent marginal US tax rate applicable to BCI."

Do you see that?

A. I do.

Q. Do you have any understanding as to what she meant by that?

A. No, I don't know.

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Q. And the use of the word "discount"

in her sentence, was it your understanding that the differential in the value of the assets acquired versus the purchase price paid was a discount?

MR. SHAW: Objection to form.

A. I don't recall reading the e-mail chain down that far. My response as I read and recollect it was a response to the e-mail from Caroline suggesting that I get involved. So this is certainly the first time I recall seeing the sentence and I don't have any sense as to what Beatrice meant by it.

Q. And other than this e-mail chain, did you hear anyone else at Barclays refer to that differential to mean the value of the assets acquired and the purchase price as a discount?

A. No.

Q. What is Beatrice Montaudy's position?

A. She works in the tax department in New York.

Q. And what's her position within the

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tax department?

A. I'm not sure. At the time she reported to Susan Grbic. She was the US head of tax.

Q. And do you know what her position is now, Beatrice Montaudy's, if she's still with the bank?

A. She's still in the US tax department, yes.

Q. And her position?

A. I don't know.

Q. As the week goes on, Tuesday, Wednesday, Thursday, that week of the 15th of September, was it your understanding that the nature of the transaction was changing?

A. I don't recall precisely what day I became aware of that but certainly by the Monday when a deal had been executed I was aware that the form of the deal was different than that envisaged previously.

Q. So you're comparing Monday, the 15th, to the weekend.

A. Yes.

Q. Now moving further in the week,

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was it your understanding that the deal that was discussed and the deal that was the subject of the acquisition sheets we were looking at before, the Monday/Tuesday transaction, did that change during the course of the week?

A. So from when to when?

Q. So starting Monday, the 15th, the day that Lehman declares bankruptcy, you go back, you reengage in discussions with Lehman on the 15th.

A. Yeah.

Q. That deal that evolves from those discussions, does that change during the course of the week as far as you know?

A. Sorry. That was the question I was responding to previously. I must have misunderstood the question.

Yes. It was -- so over the week from the 15th to Monday, the 22nd when the deal was executed, I understood that the form of the deal changed.

Q. As you sit her, what's your understanding of the how the form of the deal

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2 changed from the 15th to the 22nd?

3 So not what you knew at the time
4 but what you know now with the benefit of
5 everything that's happened.

6 A. The main thing I know is that the
7 deal that was executed finally there may have
8 been changes in the form which I was not
9 specifically aware of. The change in the form
10 I was aware of was that we were entering into
11 a repo type transaction involving the Fed but
12 that was the principal difference that I was
13 aware of.

14 Q. Now, going back to the week of the
15 15th, did you become aware of this change to a
16 repo type transaction during that week?

17 A. I can't recall precisely when I
18 became aware of that because I know I was
19 definitely aware of it by the 22nd. It's
20 possible I was aware of that sometime before
21 then, but I can't recall accurately whether
22 that was the case or not.

23 Q. Do you recall what role you played
24 on Thursday, the 18th, Friday the 19th, over
25 the weekend, onto the 22nd? What were you

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2 doing during that time frame?

3 A. I don't accurately recall. I was
4 involved in discussions around the balance
5 sheet I was maintaining so including lofty
6 placeholder numbers at that stage obviously
7 and speaking to people to try to improve
8 those. But beyond that general level I don't
9 recall specific involvements during those
10 days.

11 Q. Do you have any understanding of
12 any efforts made by Lehman and Barclays to
13 identify additional assets to be delivered by
14 Lehman to Barclays on Friday, the 19th, and
15 then the weekend that followed?

16 A. No.

17 Q. Was it your -- is it your
18 understanding that all of the assets acquired
19 by Barclays from Lehman, the deal that was
20 finally executed, are also assets that came
21 over as a result of the repo?

22 A. My understanding was that the repo
23 transaction was involved but to my
24 understanding the assets that were acquired or
25 the liabilities that were incurred were

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2 from -- I was less involved and interested in
3 how things developed during the week because I
4 wasn't particularly involved in that.

5 What I was interested in was the
6 deal which ended up getting done. So it was
7 based on the deal documents and conversations
8 with those who understood elements of any one
9 asset class. Rather than -- rather than any
10 sort of development or other sets of
11 discussions.

12 Q. In terms of working with the
13 balance sheet which was a document that you
14 said was an iterative document that you were
15 working with, how did you obtain information
16 that you put into your work-in-progress
17 balance sheet?

18 A. It was principally a process of
19 liaison and discussion across finance and with
20 others. So I was speaking with many people
21 over the course of months to at first get an
22 understanding of the nature of the transaction
23 and the assets and liabilities that had been
24 acquired. And then later at a more granular
25 level to get an accurate representation for

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2 our books and records and annual report.

3 So it was a project size involving
4 a huge number of people in the back.

5 Q. And did you actually sit down with
6 the Asset Purchase Agreement and use that as a
7 guide to helping you create the balance sheet?

8 A. The Asset Purchase Agreement was
9 one of the documents which I looked at, yes.

10 Q. And did you actually annotate the
11 Asset Purchase Agreement against the changes
12 that were made in the clarification letter?

13 A. I made no annotations that I can
14 recall, no.

15 Q. Okay.

16 A. I -- no.

17 Q. Were you aware of changes to the
18 Asset Purchase Agreement that were made via
19 the clarification letter?

20 A. I wasn't aware of changes. I
21 was -- the best way of putting it would be
22 that I looked at the Asset Purchase Agreement,
23 the amendment to the Asset Purchase Agreement,
24 and the clarification letter as a
25 representation of the transaction. I wasn't

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2 differentiating between the two. I had to
3 look at all of them to get a sense of the
4 transaction that was done.

5 Q. When's the first time you recall
6 seeing the Asset Purchase Agreement?

7 A. I definitely saw -- I'd definitely
8 seen it by the 18th. It's possible I may have
9 seen a draft a day or two before that. I say
10 a draft. A version or a copy. I definitely
11 have an e-mail which indicates that I had it
12 on the 18th because I looked for that in
13 preparing for this deposition.

14 Q. Do you recall what the event or
15 circumstance was that makes you so sure that
16 you had it by the 18th? You saw an e-mail?

17 A. I saw an e-mail.

18 Q. Sorry. Do you know why you were
19 provided with a copy on the 18th?

20 A. Because I was responsible for
21 putting together the acquisition balance
22 sheets and it was important I had a sense of
23 the transaction so I was seeking to get copies
24 of relevant deal documentation.

25 Q. When's the first that you saw the

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2 clarification letter?

3 A. Again, in preparing for the
4 deposition I had looked at my e-mails and I
5 definitely have an e-mail on the 22nd which
6 had the clarification letter attached to it.

7 Q. Did you find any indication in
8 preparing for your deposition that you
9 received a copy of the clarification letter
10 prior to the 22nd?

11 A. No.

12 Q. And in terms of the process you
13 followed in putting together the balance sheet
14 you actually sat down with the operative legal
15 documents to help you prepare the balance
16 sheet?

17 A. I referred to them, yes. Yes.

18 (Deposition Exhibit 396A,

19 three-page document bearing production
20 numbers 464242, marked for
21 identification as of this date.)

22 BY MR. TAMBE:

23 Q. Sir, I've placed before you a
24 three-page document marked Exhibit 396A. Take
25 a moment to review it and tell me when you're

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2 done.

3 MR. SHAW: I'll note that there
4 appears to be an erroneous or additional
5 unknown date on this at the very top.
6 I'm not sure if it's just an artifact of
7 the document production.

8 MR. TAMBE: Yeah. The first two
9 lines on page 1 are an artifact of the
10 document production. As is the date
11 that appears in the bottom left-hand
12 corner.

13 (Document review.)

14 A. Okay.

15 Q. And you'll see your cover e-mail
16 is an e-mail from you to Martin Kelly at
17 Lehman.

18 Do you see that?

19 A. Yes.

20 Q. And others.

21 A. Yes.

22 Q. And who is Martin Kelly?

23 A. At that time?

24 Q. Yeah, at that time.

25 A. Martin was -- I'm not sure

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2 precisely what his position was but he was a
3 senior member of finance for Lehman.

4 Q. Okay. And what role does he have
5 now?

6 A. He's now the CFO of the Americas
7 for Barclays Capital.

8 Q. And if you follow this e-mail
9 chain it starts with a request from Patrick
10 Clackson to James Walker trying to acquire --
11 trying to obtain a balance sheet.

12 Do you see that?

13 A. Yeah.

14 Q. And then James sends that request
15 on to Martin Kelly.

16 Do you see that?

17 A. Yeah.

18 Q. And there's an e-mail then from
19 Martin to James Walker and to you with some of
20 the numbers on the balance sheet.

21 Do you see that?

22 A. I see the e-mail, yes.

23 Q. Just in terms of process, let me
24 ask you why was Barclays reaching out to
25 Lehman for an opening balance sheet?

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MR. SHAW: Objection, foundation.

Q. If you know.

A. I don't know why James specifically sent it to Martin. During the period we were speaking with Lehman employees who had familiarity with some of the acquired assets for some information. But I wouldn't -- I wouldn't know precisely why James at that time thought that Martin was the best source of information for the numbers at that stage.

Q. And as you developed your balance sheet, the one that you worked on --

A. Yeah.

Q. -- did you work off of the Lehman prepared balance sheet or did you create a new balance sheet from scratch?

A. I created a new balance sheet from scratch.

Q. Did you compare your balance sheet to the Lehman balance sheet?

A. There wasn't any Lehman balance sheet as such that I was aware of.

Q. And what I mean by the Lehman

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balance sheet, the Lehman-prepared balance sheet.

A. Apart from this list here I'm not aware of a parallel Lehman balance sheet existing.

(Deposition Exhibit 397A, document bearing production numbers BCI-EX-(S)-00013605 through BCI-EX-(S)-00013606 with attachment, marked for identification as of this date.)

BY MR. TAMBE:

Q. Sir, I've handed you a document marked Exhibit 397A. It's a cover e-mail, a placeholder sheet, and a spreadsheet. Take a moment to review it and let me know when you're done.

(Document review.)

A. Sure.

Q. Have you had a chance to review it?

A. Yeah.

Q. If you look at the cover e-mail, the second e-mail on the first page is an

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e-mail from Robert Azerad to you, James Walker, and others.

Do you see that?

A. Yeah.

Q. And it attaches a document that's titled Copy of Opening Balance Sheet. There's some more notations after that.

A. Sure.

Q. And the attachment appears to be a spreadsheet.

Do you see that?

A. Yeah.

Q. And you'll see that several of the items on that spreadsheet tie into the numbers on the other exhibit we were looking at, Exhibit 396A.

Do you see that?

A. Yes.

Q. Does this refresh your recollection at all that you received a spreadsheet from Lehman setting out the opening balance sheet?

A. Well, I clearly received this spreadsheet, yes.

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Q. Did you have any discussions with Lehman about the valuation of the total assets that's reflected on Exhibit 397A?

A. No. No.

Q. And did you have an understanding as to the source of that information?

A. No, I don't have any understanding as to the source.

(Deposition Exhibit 398A, two-page document bearing production number 44230, marked for identification as of this date.)

BY MR. TAMBE:

Q. Sir, I've handed you a two-page document marked Exhibit 397A. Take a moment to review that and let me know when you're done.

(Document review.)

Q. Oh, I'm sorry. 398A.

A. Okay.

Q. And in Exhibit 398A in the middle -- towards the bottom of the first page there's an e-mail from you to Martin Kelly.

Do you see that?

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2 A. Yes.

3 Q. And you're in particular asking
4 him about his \$44.88 billion number.

5 Do you see that?

6 A. Yes.

7 Q. And you ask him whether the
8 additional 1.9 billion of assets separate to
9 the 15(c)(3) is part of that 44.88 number.

10 Do you see that?

11 A. I see that, yeah.

12 Q. What's your understanding of what
13 the 1.9 billion of additional assets is a
14 reference to?

15 A. The 1.9 is a reference there to
16 securities which were due to Barclays clearing
17 process. And the purpose of my mail was
18 essentially to ensure that we weren't double
19 counting when trying to identify the assets
20 that needed to be valued.

21 Q. And you see the response from
22 Martin Kelly to you where he says, "Includes
23 the 1.9B."

24 Do you see that?

25 A. Yes.

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2 Q. Do you recall further discussions
3 on this topic as to whether the 44.88 included
4 the 1.9?

5 A. Yes.

6 Q. And do you recall that ultimately
7 you resolved the 1.9 was not included as part
8 of the 44.88?

9 A. Well, if we're using shorthand for
10 the 1.9 and the 44.88 to refer to assets from
11 the clearance box and assets which came across
12 the repo, then the conclusion of those
13 discussions was that not all of the assets
14 from the clearance boxes had come across. And
15 there was some which were still to be
16 received. The 1.9, 2.9, and 44.88 were not --
17 did not end up being represented as Barclays'
18 view of the fair value of the assets which is
19 the numbers that are represented in that
20 financial statement.

21 I'm not sure what the source of
22 those two numbers themselves and the values
23 was.

24 Q. And it's your understanding that
25 the assets in the clearance boxes is what

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2 ultimately became Schedule B; is that right?

3 A. I don't have enough of an
4 understanding about the precise composition of
5 Schedule B as it relates to understanding
6 there. My understanding was that Barclays was
7 to due to receive the assets from the clearing
8 box and we received some but not others at
9 that time.

10 Q. Putting on your 30(b)(6) hat now
11 for a moment.

12 A. Yeah.

13 Q. What is your understanding of
14 Schedule A to the Asset Purchase Agreement?

15 A. My understanding of Schedule A was
16 that it was the representation of the assets
17 which were coming across to Barclays against
18 the reverse repo.

19 Q. So your understanding is that all
20 of the assets that are listed on Schedule A
21 were assets that had been pledged to the Fed
22 and were transferred to Barclays.

23 MR. SHAW: Objection.

24 Mischaracterizes the prior testimony.
25 Foundation.

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2 Q. You can answer if you understand
3 the question.

4 A. I was aware that there was a
5 reconciliation process which was required of
6 Schedule A at the detailed CUSIP level but
7 it's my understanding that was what Schedule A
8 was intended to represent, yes.

9 Q. Just so we're clear, every CUSIP
10 that appears on Schedule A it is your
11 understanding as the 30(b)(6) witness for
12 Barclays that every one of those CUSIPs was a
13 CUSIP that had been pledged to the Fed?

14 A. No. That's not my understanding.

15 MR. SHAW: And I'm going to object
16 this witness has been offered only with
17 respect to the Schedule A and Schedule B
18 issues to talk about the Barclays effort
19 to value the securities that appear on
20 Schedule A and Schedule B.

21 MR. TAMBE: Okay. So let's just
22 mark the 30(b)(6) and maybe it's already
23 been marked. Has it already been
24 marked?

25 MR. McMAHON: This one I think has

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2 not been.

3 MR. TAMBE: Okay. So then let's
4 mark it. We'll just mark the 30(b)(6)
5 notice so we have some precision as to
6 what he's being offered for and what
7 he's not being offered for.

8 MR. SHAW: Okay.
9 (Pause on the record.)

10 BY MR. TAMBE:

11 Q. Sir, I've placed before you a
12 document that's been marked 81B.

13 MR. TAMBE: My first question is
14 really a point of clarification for your
15 counsel. On items 1 and 2 of Schedule A
16 of this 30(b)(6) notice for what -- for
17 what subjects or topics is Mr. Romain
18 the 30(b)(6) witness for Barclays?

19 MR. SHAW: Mr. Romain is a
20 30(b)(6) witness on the issue of
21 Barclays' efforts to value the
22 securities that were on Schedule A and
23 Schedule B.

24 BY MR. TAMBE:

25 Q. Taking off your 30(b)(6) hat, do

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2 you have any understanding as to how the
3 assets that came to be listed on Schedule A
4 and Schedule B were selected?

5 A. No, I don't. No.

6 Q. And taking off your 30(b)(6) hat,
7 do you have any understanding as to how the
8 assets on Schedule A and Schedule B were
9 transferred to Barclays?

10 A. No, I don't. No.

11 Q. Do you have an understanding as to
12 whether the assets on Schedule A and Schedule
13 B have, in fact, been transferred to Barclays?

14 A. In terms of -- at the CUSIP level
15 I was aware there was a reconciliation process
16 so my understanding is that is not a -- that's
17 not a perfectly accurate statement was my
18 understanding. My involvement with the
19 Schedule A and Schedule B assets was in
20 relation to ensuring that the assets that were
21 received by Barclays were the properly
22 recorded value. The process by which they
23 came to be transferred to Barclays is an area
24 which I don't have particular insight into.
25 (Pause on the record.)

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2 Q. Sir, I've placed before you a
3 document marked previously as Exhibit 86B.
4 Would you take a moment to look at this
5 spreadsheet and let me know when you're done.
6 (Document review.)

7 A. Okay.

8 Q. When you talked about the
9 valuation of the Schedule A and Schedule B
10 assets, does this document, Exhibit B, relate
11 to that process in any way?

12 A. It does, yes.

13 Q. Is 86B the summary level valuation
14 of the Schedule A assets?

15 A. Yeah. It's the summary level
16 valuation for -- yeah, for those assets.

17 Q. So now with your 30(b)(6) hat
18 firmly on I'm going to ask you to explain to
19 me at the summary level from Exhibit 86B what
20 is the information that's in 86B. And you can
21 start with the spreadsheet and go by rows or
22 columns. Describe this collection of
23 information.

24 MR. SHAW: Before we do, can we
25 just confirm that the witness believes

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2 this was the final version of that?

3 MR. TAMBE: Sure.

4 Q. Is it the final version?

5 A. It looks like the final version.
6 To be definitive I would need to compare -- to
7 be definitive sitting here right now I would
8 need to compare the numbers with those on the
9 acquisition balance sheet.

10 Q. And we had earlier this morning
11 looked at what you believed to be the final
12 version of the acquisition balance sheet.

13 A. Yeah.

14 Q. Let me see if I can locate that.
15 Which is Exhibit 377A.

16 A. Yeah.

17 Q. Are you doing that comparison now,
18 sir?

19 A. I am, yes.

20 Yes. This is the final version.
21 There were some immaterial off-line
22 adjustments made just to tidy up right before
23 the financial statements were published but
24 the differences were very minor.

25 Q. So keep before you the final

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acquisition balance sheet which is 377. Also keep in front of you 86B. I'm going to add one more document to your pile for now and that's a document previously marked as Exhibit 87B and if you could confirm that that is the valuation of the Schedule B assets.

A. Sorry. I think there's been -- there's confusion there.

Q. Okay.

A. Exhibit 86B is the valuation of the assets which were received by Barclays, whether Schedule A or Schedule B.

Q. All right.

A. The Exhibit 87B is the valuation of the -- of securities which were received on or around the 22nd of September from JPMorgan Chase.

Q. Okay. No, you're absolutely right. Okay. So going back to 86B, 86B includes both Schedule A and Schedule B.

A. Yeah. It includes all of the Schedule A and Schedule B assets that were received around -- well, around the time of the deal. So yes.

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Q. All right. So looking at -- and 87B, is that a final schedule as well, if you can confirm that?

A. It is, yes.

Q. Let's start with 87B which is the JPM -- it has the title JPM assets.

Do you see that?

A. Yes.

Q. And putting on your 30(b)(6) hat which should remain firmly on this whole series of questions.

A. Sure.

Q. Describe for me what this spreadsheet is.

A. This spreadsheet is a summary of a valuation of those assets designed for inclusion in our books and records and in our financial statement disclosures.

Q. And going across the columns, column A of this spreadsheet lists -- these are the top third asset categories.

Do you see that?

A. Yes.

Q. There's a phrase there, Portfolio

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3. Does that have any meeting to you, sir?

A. Portfolio 3 was the term used to refer to the JPMorgan assets.

Q. And then you have several asset categories. Lines 13 and 14 have the initials PMTG and PMTG unknown.

Do you see that?

A. Yes.

Q. What is PMTG?

A. PMTG is a group within the firm. It's a business line. It relates -- let me get this correct. Principal mortgage trading group I think is the full name.

Q. There's a separate line item, line 6, which states Agency Mortgage.

A. Yeah.

Q. Okay. Do you know if any agency mortgages are included within PMTG?

A. Well, the line for PMTG is not supposed to indicate that these were all assets of a PMTG type. That group wouldn't typically trade in some of these items. The significance here is that PMTG were the group that were taking responsibility for

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coordinating the valuation of the acquired assets from a business perspective.

So what happened was that initially assets were taken into a central pot, if you like, such that they could be considered, you know, as part of the acquisition.

Subsequent to that assets were transferred to the appropriate group that would trade in those asset classes as a data matter also in the Street or whatever decision was made with those assets subsequent to acquisition. But PMTG were responsible until that happened from a business perspective.

Q. So assets that would have come over from JPMorgan obviously would not have had a PMTG tag on them. They would have been agency mortgages, corporates, munies, et cetera, right?

A. All asset classes.

Q. If you look behind the line 13 PMTG does it break out into separate asset classes?

A. The breakout of the asset classes

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2 is rows 6 to 10.
3 Oh, in terms of the PMTG item.
4 Q. Yes.
5 A. Right. I may have misunderstood
6 the question then.
7 The PMTG -- the non-PMTG items are
8 principally the ones in 6 to 10. The items in
9 row 13 would have been the ones which, by
10 nature, were more relevant to PMTG as a group.
11 But PMTG were responsible for all of them
12 until they were transferred out of this sort
13 in effect pool which the assets were initially
14 transferred into. As a matter of practice
15 they were our single point liaison for the
16 Lehman acquisition.
17 Q. All right. Column B is titled
18 Notional. And what's your understanding of
19 what that means?
20 A. The contractual notional of the
21 underlying assets.
22 Q. Column C is -- well, before we go
23 to C, when you say contractual notional that
24 is the principal amount owing on those
25 securities?

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2 Q. Column D is JP value.
3 A. Yes.
4 Q. And that's the value -- well, what
5 is that?
6 A. That's the value that JPMorgan
7 were contributing to the securities on the
8 30th of September.
9 Q. So both column C and column D are
10 30th of September values.
11 A. That's correct.
12 Q. Do you know when this particular
13 sheet, 87B, was prepared?
14 A. There were -- again, there were
15 multiple versions of this as our understanding
16 of the assets developed. The -- until a final
17 version was produced which was shortly before
18 the annual report was produced.
19 Q. When was the earliest version of
20 this document prepared, 87B?
21 A. The earliest version in that form
22 would have been shortly after the 22nd of
23 December. Because we weren't able to -- the
24 appropriate value for us to include in our
25 books and records was the value of the

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2 A. Yes. The principal value, yes.
3 Q. Column C is FO value. Does that
4 mean front office value?
5 A. It does, yes.
6 Q. And whose front office?
7 A. Our front office.
8 Q. What --
9 A. Barclays, sorry.
10 Q. What is the significance of a
11 front office value?
12 MR. SHAW: Objection.
13 Q. What does it mean?
14 A. The process by which assets are
15 valued within Barclays is that first off the
16 front office would value. The second line of
17 consideration is that price testing will occur
18 within the product control group within
19 finance. So the initial marking of any book
20 including this book would be done by the front
21 office.
22 Q. And does the front office include
23 the traders who trade these products?
24 A. Yes. The front office would be
25 the traders.

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2 inventory on the day we received the items,
3 being the 22nd of December.
4 Prior to that there were -- there
5 were understandings of what assets we were
6 expecting to receive and therefore preliminary
7 versions. But nothing which had data which
8 was struck to a date which would have been
9 appropriate for inclusion could have existed
10 before the 22nd of December.
11 Q. The column C and column D are
12 values as of the 30th of September, right?
13 A. Yeah.
14 Q. Why was that date picked?
15 A. It was picked largely for
16 practical reasons. It was a month-end. It
17 didn't have any significance for books and
18 records. Which was the primary purpose of
19 this spreadsheet.
20 Q. Was there any discussion within
21 Barclays at valuing both doing a front office
22 value and a JP value of these JPM assets as of
23 the 22nd of September 2008?
24 A. Sorry. I don't understand the --
25 Q. Was there any discussion of doing

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2 the valuation as of the 22nd of September as
3 opposed to the 30th of September?

4 A. There was discussion with auditors
5 as to what the appropriate date to include in
6 our books and records was for these. The two
7 dates -- the two relevant dates were the 22nd
8 of December and the 22nd of September.
9 Because you've got the transaction date and
10 you've got the date you receive the assets and
11 there's two different ways of viewing the
12 transaction from an accounting perspective
13 purely the decision which was reached was to
14 use the 22nd of December.

15 Q. How did Barclays calculate its
16 front office values as of the 30th of
17 September for these assets which it did not
18 receive until the 22nd of December?

19 A. I can talk to the general process
20 of valuation as at the date. In terms of how
21 the front office went about its -- how it went
22 about it in a historical sense, the processes
23 would have been the same and were the same.
24 But struck at a different date. We had the
25 items -- we had the identity of the items. So

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2 time because their significance at that time
3 was marginal.

4 Q. Again, just so I understand what
5 you're telling me, are you saying that you
6 knew as early as the 30th of September the
7 list of assets that you eventually received on
8 December 22nd?

9 A. No.

10 Q. No. When did you first know what
11 specific assets you would be receiving from
12 JPMorgan Chase?

13 A. I'm not sure what date that that
14 was absolutely finalized.

15 Q. So, again, I'm going back to this
16 process that was followed in coming up the
17 with the column C values which is the front
18 office values. Was it a process where your
19 traders in December, sometime in December got
20 a list of the JPMorgan Chase assets by CUSIP
21 number and went back to historical pricing
22 data to try and price those as of the 30th of
23 September.

24 A. That's correct.

25 Q. Okay. And just focusing on that

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2 it's a case of valuing as at based off market
3 data which is relevant as of that date. So
4 I'm not sure if I'm understanding the
5 question.

6 Q. I think towards the end of your
7 answer you answered it. So let me see if I
8 understand it.

9 A. Yeah.

10 Q. For the items that you received
11 from JPMorgan Chase on December 22nd, on or
12 about December 22nd, your traders went back to
13 market data to try to value those assets as of
14 the 30th of September; is that right?

15 A. There had been previously drafts
16 of expected values which predated the 22nd of
17 December. And the 30th of September was a
18 date which was looked at on a consistent basis
19 as the understanding as to the identity of the
20 assets that we would receive changed. And
21 then when we reached the 22nd of December, the
22 22nd of -- the valuation as of the date the
23 items were received were updated and were
24 focused upon. There was not a great deal of
25 focus on the 30th of September values at that

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2 exercise, why didn't they price them as of the
3 22nd of September? For that column, column C.

4 A. That exercise wasn't done for the
5 first time until the 22nd of December. The
6 understanding as to the items would have
7 changed as understanding as to what items
8 would be received changed in the days and
9 weeks preceding the 22nd of December. So it
10 wasn't a new process, let's value them on the
11 30th of September, on the 22nd of December.
12 That wasn't the first time where people were
13 looking at that. Over the period -- over the
14 period from the acquisition date up until the
15 22nd of December there was an ongoing process
16 to try and get a handle on what value - what
17 assets and what value of assets we would end
18 up receiving. And that was again an iterative
19 process. This just represents a part of that
20 being two month-end values and the actual
21 value that we received.

22 Q. Let me try it another way.

23 Was September 30th the month end
24 picked because there was better or more
25 complete pricing data available as of the 30th

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2 of September as opposed to the 22nd of
3 September?

4 A. I'm not sure.

5 Q. And do you have any sense
6 generally whether this collection of assets
7 you received from JPMorgan Chase increased in
8 value or decreased in value from the 22nd of
9 September to the 30th of September?

10 A. I don't have a great sense of the
11 sense which is created by the summary. The
12 values for the 30th of September were not
13 items that I particularly focused on because
14 from the point of the view of the process of
15 valuing being -- the point of view of valuing
16 the portfolio, the important number was the
17 most up to date number.

18 If you're looking at previous
19 month ends, say the 31st of October or the
20 30th of November, as time was progressing,
21 then at that time it was -- the interesting
22 thing would be based on our assessment of what
23 assets we expect to receive, what they'd be
24 worth at that time, at the point in time we're
25 setting because we didn't know when we

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2 received them so the 22nd of December wasn't a
3 date which had any significance for us earlier
4 than that. So we were constantly updating our
5 best estimate of the value we expected to
6 receive.

7 So there were values done of this
8 portfolio or our best estimate of this
9 portfolio on a number of dates preceding that
10 as time progressed. And this was the last one
11 because this was the one that corresponded
12 with the date that we received them.

13 Q. Just help me trace your -- trace
14 the connection between 87B and 377A. You
15 could use line items or page numbers.

16 A. Sure.

17 Q. I just want to see where the
18 numbers, if they do, from 87B track onto the
19 spreadsheet that's 377A.

20 A. The tracking is the cell E-18 from
21 37B.

22 Q. So that's 3.9 billion and change.

23 A. Yeah.

24 Q. All right.

25 A. That feeds through to -- the

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2 easiest one to look at is actually the one
3 which is numbered 844. That feeds through to
4 cell C-8. And then cell G-18 is a component
5 of cell C-12.

6 MR. SHAW: Just so we're clear,
7 when you said G-18 you were talking
8 about on 87B and when you were talking
9 about C-12 you were talking on the
10 second page of 377A?

11 THE WITNESS: That's correct.

12 Q. Okay. So the -- looking at 87B,
13 the cell you pointed me to was E-18.

14 A. Yes.

15 Q. That's the column dated 22
16 December 2008 BCG value, correct?

17 A. Yes.

18 Q. And the total number is 3.916
19 billion and change, right?

20 A. (Witness nods.)

21 Q. And when you go over to the
22 acquisition balance sheet which is
23 Exhibit 377A on the second page in column --
24 in cell C-8, the number of 3.92 is just a
25 rounded up 3.916, correct?

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2 A. That is correct.

3 Q. There is in the acquisition
4 balance sheet a line item for valuation
5 adjustment which is a negative \$2.09 billion
6 number, correct?

7 A. Yes.

8 Q. And what you have also told me is
9 for the JPMorgan Chase assets there is an item
10 number which is G-18 which is \$176 million.

11 A. Yeah.

12 Q. That is also part of the 2.09
13 valuation adjustment.

14 A. That's correct.

15 Q. All right. Okay. So on your
16 acquisition balance sheet, the JPM inventory
17 which is line 8, that is being valued as of
18 December 12th, 2008, correct?

19 A. December 22nd.

20 Q. Sorry. December 22nd, 2008.

21 A. That's correct.

22 Q. You're right, yeah.

23 The line item which is 7 on your
24 acquisition balance sheet which states Initial
25 Inventory, that is being valued as of the 22nd

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2 of September, 2008, correct?

3 A. Yes.

4 Q. And those valuations and the other
5 items on your acquisition balance sheet roll
6 up to the negative goodwill item of
7 4.7 billion, correct?

8 A. Those items are part of the net
9 assets which contribute towards the negative
10 goodwill calculation, yes.

11 Q. And if I go to the first page of
12 Exhibit 337A, which is a form of the
13 acquisition balance sheet, that was used for
14 disclosure purposes, correct?

15 A. Yeah.

16 Q. On that first page of
17 Exhibit 377A, the values for the assets are as
18 of those different dates that we've talked
19 about. Some of those assets are valued as of
20 the 22nd of December and some of them are
21 being valued as of the 22nd of September.

22 A. That's correct.

23 Q. All right. Other than those two
24 dates, are there any other dates as of which
25 assets were valued for purposes of your

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2 acquisition balance sheet?

3 A. No.

4 Q. Let's take a look at 86B which --
5 I'm sorry. Let's stay with 87B for a minute.
6 A few other items here.

7 Column E on 87B which is BCG
8 value, what's that? The product control
9 group?

10 A. Yes. That's correct.

11 Q. And what is that? An internal
12 independent price valuation group of some
13 type?

14 A. Yes. That's the mid price value
15 that resulted from the process of product
16 control price testing front office values. So
17 that was the end agreed Barclays value. The
18 mid price.

19 Q. And just to be clear, what that
20 process was, the obtaining of the BCG value,
21 could you describe how just mechanically the
22 process that's followed within Barclays to
23 come up with those BCG values. Go from the FO
24 values, the front office values, to the BCG
25 values.

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2 A. Yeah. So the front office will
3 mark their assets -- the traders who trade the
4 assets and are closest to it for that purpose,
5 that's the same process that we followed on a
6 business as usual basis for all assets, all
7 trading assets which are held by Barclays
8 Capital.

9 Those valuations would then be
10 considered by price testing group which
11 resides within product control. They would
12 test those prices by reference to observe for
13 market data and indices and close proxies and
14 broker quotes and other sources of independent
15 information which will differ according to
16 asset class and security type.

17 The difference between those two
18 values would be assessed and discussed and a
19 consensus value will be included on the
20 balance sheet.

21 Q. The next column over, F, is MV
22 with liquidity which is market value with
23 liquidity; is that right?

24 A. Yes. That's the market value
25 stated at bid price. So under accounting

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2 standards we're required to measure assets at
3 bid so our best estimate of exit price. And
4 that's what column F is. And that's the net
5 number which feeds into the acquisition
6 balance sheet and therefore the negative
7 goodwill calculation and financial statement
8 disclosures.

9 Q. At the bottom section of this
10 spreadsheet, 87B, is titled Entity Level
11 Breakdown.

12 Do you see that?

13 A. Yeah.

14 Q. Could you describe briefly what
15 information is being shown in that section of
16 the spreadsheet.

17 A. Yeah. That's the allocation of
18 the items between two legal entities.

19 Q. Okay. What are those two legal
20 entities?

21 A. LMBR is BBPLC is part of a branch
22 of that. And LICT is a separate entity whose
23 full name -- I can't recall its full name off
24 the top of my head. It was another
25 wholly-owned subsidiary of the Barclays group.

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I can't recall the full name.

Q. Okay. If you look at 337A which is the acquisition balance sheet --

A. Yeah.

Q. -- and if you look at the second page, line 8 which is the JPM inventory, we earlier looked at cell C-8 which is the BCG value number, the 3.92, correct?

A. Yes.

Q. And if you read across that line, that 3.92 number is allocated between BCI, right? .69 is allocated to BCI?

A. I have misspoke. The LMBR relates to BCI not to BBPLC.

Q. All right. And the remainder, 3.23 billion, is allocated to column N as in Nancy, 3.23.

Do you see that?

A. Yes.

Q. And that's a Cayman -- that's Cayco is what it's called?

A. Yeah. That was a shorthand. That wasn't its full name. That's the main reason why I can't recall the full name of it because

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I was used to referring to it in shorthand as Cayco.

Q. What can you tell us about what Cayco is?

A. It's a subsidiary of Barclays Group.

Q. Is it a Cayman Islands company?

A. It was certainly going to be set up in the Caymans which is why it was referred to as Cayco. My recollection is that's -- yeah, my recollection is that is what happened here.

Q. And just to be clear, the BCI where .69 of the 3.9 billion is allocated, that's the US broker/dealer, correct?

A. That's correct, yes.

Q. Let's turn to 86B.

86B is Schedule A and Schedule B, correct?

A. 86B is -- yeah, it's the inventory which was received -- it's the inventory which was received the weekend of the 21st and the days preceding that.

Q. Does 86B include any inventory

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that you expected to receive but have yet not received?

A. No. This spreadsheet is the valuation of the inventory we did receive.

Q. And I apologize if I've asked you this before. Other than 86B and 87B, are you aware of any other inventory that you're expecting to receive that you haven't yet received?

A. In addition to 86B and 87B?

Q. Yes.

A. Yes, I am.

Q. Okay. And what is that other inventory?

A. Items from the LBI clearance boxes which has not yet been transferred to Barclays.

Q. And so those items have not been included in your calculations in 86B and 87B; is that correct?

A. That's correct.

Q. And, therefore, they haven't -- well, maybe not therefore. And they have not been included in your acquisition balance

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sheet, Exhibit 377A?

A. That's not correct.

Q. Okay. So where on 87 -- on 377A have you provided for items that you expect to receive but, in fact, have not yet received?

A. To the extent that they have been recognized they are included in cell C-11.

Q. And that's an item of about 700 million, correct?

A. Yes.

Q. And it's titled Additional Unencumbered Assets?

A. Yes.

Q. And now setting those aside, what else is there in terms of collateral that you expect to receive, have not yet received, and haven't accounted for in your acquisition balance sheet?

A. And haven't accounted for.

Q. Have not accounted for.

A. There are further unencumbered assets which we commonly refer to as list B-2 and C which were not included in cell C-11 of the second page of 377A in terms of other

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assets that have not been recognized.
There is also collateral raised
futures positions held in Lehman affiliates
which has not been recognized. There is --
actually, would it be possible to refer to
those notes? I'm sure there are two smaller
items -- there are four items which I -- I'm
aware there are four items. That's two of
them. There are two other items which I can't
immediately recall.

Q. And the notes that you're
referring to are the notes that were handed
over to us this morning.

A. Yes.

Q. Is it your handwritten notes?

A. Yes.

(Deposition Exhibit 399A,
handwritten notes, marked for
identification as of this date.)

A. Oh, yes. So the principal and
interest on --

Q. Hold on one second. Let's just
get --

A. Sure.

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Q. I've handed you an exhibit which
has been marked as 399A. Are those the notes
that you were referring to?

A. They are.

Q. Okay. And if you could state for
the record what the other items are. The
other two items are.

A. The other two items are principal
and interest on the unencumbered assets which
are summarized in cell C-11 of Exhibit 377A.
And also -- and also collateral against
customer positions which held in the form of
letters of credit were not recognized for
accounting purposes.

Q. Just on your notes, where in your
notes are you? This is page 1 of your notes,
right?

A. Yes. It's the second -- it's the
second bullet. So I've just been through the
four subbullets of the second bullet.

Q. And the second bullet just to be
clear is titled Assets Not Received Not on
Balance Sheet, Not on BS.

A. Yes.

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Q. That's it.

A. Yes.

Q. And your estimate of the value of
those four items is 765 million and then you
have a provision, correct?

A. The provision is against those
items. They're two separate items.

Q. Okay. So the valuation then -- or
your estimate of the valuation of those four
items is 765 million?

A. Yes.

Q. And, again, just to be clear,
those do not appear -- that item, 765 million,
is not included on your acquisition balance
sheet, Exhibit 377A, correct?

A. Correct.

Q. And it's not part of 86B and 87B.

A. That's correct.

Q. Okay.

All right. 86B. There are two
parts of the first page of Exhibit 86B that I
want to draw your attention to. There appears
to be a valuation and calculation as of the
22nd of September which goes from line 1

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through line 30; is that right?

(Document review.)

A. Yes.

Q. And then starting on line 32 down
to line 45, if I'm reading this correctly,
this appears to be a valuation or a
calculation as of 9 January, '09; is that
correct?

A. No. It's a valuation as at 22nd
of September but they're two slightly
differing versions. One is between rows 3 and
14 and the other is between 32 and 44. There
were a couple of individual adjustments which
needed to be made which are summarized in
those 27 to 30.

But the valuations are -- for
financial reporting purposes that net
difference which is 57 million from cell E-30
is not particularly material.

Q. And in connecting 86B and 377A,
which cells on 86B roll up into the second
page of 377A?

A. So the ones in row 14.

Q. And so those would be D-14 and

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2 F-14?

3 A. That's correct. As I said, there
4 were some immaterial adjustments but if you
5 were to -- there were some immaterial
6 adjustments which were made at the last minute
7 but at a material level the cells D-14 and
8 F-14 are the ones which roll up in the
9 acquisition accounting in our financial
10 statements.

11 Q. The differential between the
12 values in the -- in column D, BCG value, and
13 the column E, Market Value 9/22, that's again
14 pricing at the bid. Is that the reason for
15 the differential?

16 A. Yes. It's the bid/offer
17 differential, yes.

18 Q. The differential between column C
19 and column D, do you know why there's a
20 differential there?

21 A. The column C values don't feed
22 into our financial reporting. They were
23 values which were ascribed to the securities
24 by the custodian whereas we are required to
25 value them by asset class according to

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2 relevant accounting standards and in line with
3 valuation methodology used for other similar
4 assets already owned by the bank. So the
5 important numbers from our financial reporting
6 perspective are those between D and F rather
7 than what the custodian may have attributed to
8 them.

9 Q. You told us earlier that this
10 document, 86B, you confirmed that this was the
11 final version that rolled up into your
12 disclosure document, correct?

13 A. Yes.

14 Q. When was the first version of 86B
15 created?

16 A. The form of it changed and evolved
17 over time. So this is the final
18 representation of valuation process which was
19 ongoing from the time of the acquisition. The
20 spreadsheet in which that process was embodied
21 may have been simpler or different at various
22 stages through that time. But it was an
23 evolution.

24 Q. And if I understand the way this
25 spreadsheet works, 86B, there is in fact CUSIP

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2 level valuation data that rolls up into each
3 of these categories, line 3, line 4, line 5,
4 et cetera; is that correct?

5 A. That's correct.

6 Q. Now, some of the collateral that
7 was transferred over to Barclays on the 18th,
8 19th and that time period of September 2008,
9 some of that's been sold, correct, by
10 Barclays?

11 A. Some of it, yes.

12 Q. Okay. How, if at all, has the
13 value at which assets were sold been reflected
14 in this spreadsheet?

15 Let me just rephrase that.

16 Is the price obtained by Barclays
17 on the sale of assets that were acquired from
18 Lehman, is that reflected on this spreadsheet?

19 A. Not directly. What I would say is
20 that there are various levels of liquidity
21 embodied in the various underlying assets. So
22 you've got very liquid and frequently traded
23 positions whereby they could be valued in a
24 straightforward manner by reference to
25 observed for market data for the 22nd of

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2 September.

3 And then there are less liquid
4 assets which trade very infrequently and for
5 which is there not much market data for those
6 assets.

7 In order to arrive at a 22nd of
8 September valuation you'll be looking at a
9 number of things, transactions in similar
10 assets, recent transactions in assets, et
11 cetera. And for those -- assets of those
12 types, the price at which assets were sold
13 shortly after may be a factor which would be
14 taken into account because it may be
15 additional evidence as to what the appropriate
16 mark was for the 22nd of September.

17 But if those prices are used, then
18 they are used only as evidence to try to
19 improve the estimate of value on the 22nd of
20 September. And, therefore, would be adjusted
21 for any changes in circumstances or market
22 conditions between the 22nd of September and
23 the dates of sale.

24 So the simplest answer is, no,
25 they're not reflected at all directly. But

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the more -- the more accurate answer is that for illiquid assets sales may factor into the valuations as one part of the consideration of the right price.

Q. Okay. They may factor in and, in fact, were factored in for certain CUSIPs.

A. I don't have a sense of to what extent those sales did feed in because that's getting down to a more CUSIP-by-CUSIP level consideration.

In terms of the general process, for the more liquid securities to the extent they were sold, yes, they would have been taken into account. But to get an accurate sense of whether that occurred in any material sense it would be necessary to talk to the relevant asset class experts.

Q. The liquidity value column, column F, BCG Liquidity Value, in effect the numbers that appear there are basically column D minus column E, correct?

A. Yes. That's the bid/offer adjustment.

Q. But if I understand your last --

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your prior answers, that's not just the bid/offer adjustment, correct?

A. No. That is just the bid/offer adjustment.

Q. Okay. So any adjustments that are made on account of sales and price discovery through sales of assets, are they not reflected in column F?

A. They would be reflected. Any adjustments to mid price that are required to get to bid are included in that column for whatever reason based on whatever evidence.

Q. So you would reflect the bid/offer adjustment where you didn't transact but where you had a bid and offer you would price it at the bid, correct?

A. All of the securities included there are priced at the bid.

Q. And in those instances where you actually had a transaction in the weeks subsequent to acquiring the assets, and you sold the asset, you actually executed as a particular price, you would use that as the price or at least that would factor into your

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analysis of the appropriate price?

A. It may do. Depending on other evidence which is available in order to get to the right bid price.

Q. Do you have any understanding as to why the PCG values in column D were different from the BoNY values in column C?

A. No.

MR. TAMBE: We could break for lunch.

MR. SHAW: Forty-five minutes?

MR. TAMBE: Forty-five minutes.

(Luncheon recess taken at 12:28 p.m.)

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AFTERNOON SESSION

(Time noted: 1:22 p.m.)

GARY ROMAIN, resumed and testified as follows:

EXAMINATION BY (Cont'd.)

MR. TAMBE:

Q. I understand, Mr. Romain, you wanted to clarify or add to one of your answers before the lunch break?

A. Oh, yes. That's correct. When we were talking about the securities which come across, I was asked about whether any which have not been received by Barclays were included on the acquisition balance sheet and I directed you towards the additional unencumbered assets on to which is cell C-11 in the second page of Exhibit 377A.

I want to clarify, that is not the only asset on the acquisition balance sheet which had not been received by Barclays. There's four types of which that is one. But the four -- they're actually -- they're summarized in the four bullets on the top of the first page of Exhibit 399A. So there's

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futures collateral held from brokers. There's the OCC collateral largely in the form of government securities. There's the unencumbered assets item. And there's also the amount of \$769 million receivable from 15(c)(3) or equivalent tax. So to be complete, that's the sum of the assets included on the acquisition balance sheet which are not in physical possession of Barclays.

Q. Okay. And other than C-11, where else would you find on this acquisition balance sheet, which is the second page of 377A, those items?

A. So the first item, the futures collateral is included in item C-17.

Q. Futures customer balances.

A. That's right.

The second item, OCC collateral, is included in item C-18. The unencumbered assets we talked about as being item C-11. And the 15(c)(3) or equivalent is item C-15.

Q. In your handwritten notes, Exhibit 399A, you have a bracket and the words

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app 3 billion.

Do you see that?

A. Yes.

Q. So approximately \$3 billion of asset value on the acquisition balance sheet is attributable to these four categories of assets not received.

A. That's correct.

Q. All right. And if you look at the line items on 377A, C-11 is -- is the entirety of that cell comprised of assets not yet received?

A. Yes.

Q. How about the 15(c)(3) assets?

A. Yes.

Q. So none of that has been received by Barclays as yet.

A. That's correct.

Q. The futures customer balances?

A. That's a mixture. Some of that has been received and some of that has not.

Q. Okay. And then the OCC customers on clearing margin?

A. That item's actually easier to see

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on the following page where it's shown gross because that item is the net of the collateral balances and the fair value of the derivative positions.

The collateral balance is item F-16 and item F-26. There's no distinction between those two lines items other than historically I had one number and then I added another number until I realized quite shortly into the process that I was actually looking at a single number.

So the total of 2.29 is partly received and partly not received.

Q. Okay. Just so I follow through then on that, on the acquisition balance sheet on page 2 of Exhibit 377 for OCC customer and clearing margin you have an amount of .98.

A. Yes. .98 directly feeds through from cell F-26.

Q. On the next page.

A. Yes.

Q. Page 845?

A. Whereas the item, 0.21 is the net of item F-16 and item F -- E-42. Sorry.

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Q. And where does that show up on the acquisition balance sheet? Is that C-14?

A. The net of F-16 and E-42 on the third page shows up in item C-14.

Q. Exchange traded options.

A. Yes.

Q. And C-14, that's an amount actually received by Barclays.

A. The -- C-14 is the net of two items from the point of view of the gross balance sheet. It's split up principally into a valuation because qualitatively it's a different process to value the open exchange derivative positions as opposed to valuing the cash and securities which represent the margin against those positions.

So the item really to look at -- or the items to look at are F-16 and F-26. The total of that is the total of the customer margin against OCC positions and some of that total, 2.29, has been received and some has not.

Q. And how much has not been received?

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A. It's approximately a billion dollars.
(Deposition Exhibit 400A, document bearing production numbers BCI-EX-(S)-00024451 through BCI-EX-(S)-00024455, marked for identification as of this date.)

BY MR. TAMBE:

Q. Mr. Romain, we're back to a non-30(b)(6) topic. I've placed before you Exhibit 400A. Take a moment to review and it let me know when you're done.

(Document review.)

A. Okay.

Q. And you'll see there's a cover e-mail from Patrick Clackson to you.

A. Um-hum.

Q. Which is forwarding the attachment to this document, Exhibit 400A.

Do you see that?

A. Yes.

Q. And is the attachment a document you're familiar with?

A. It's a document I remember seeing,

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yes.

Q. And the last page of this exhibit which is titled Appendix B, Preliminary Balance Sheet, is that a document that you prepared?

A. I can't tell if there's been any amendment to it but it is essentially a document I prepared, yes.

Q. And this is an e-mail dated September 22nd, 2008. Both the e-mails on the first page are as of that date.

Do you see that?

A. Yes.

Q. The 22nd was the Monday following the Lehman bankruptcy filing. On that day what was your source of information for the items that appear on this last page of Exhibit 400A?

A. I don't recall the source at that time. This was another version of the iterative balance sheet that was developing over the period. The iteration at any given date was based on the best information I had available at the time.

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Q. Does the valuation adjustment line if you see up in the asset allocation -- do you see it?

A. Yes.

Q. That's a negative \$2.83 billion number?

A. Yes.

Q. On the 22nd of September your BCG group had not gone through and done any kind of valuation adjustment, correct?

A. I can't recall if it's accurate to say they had done nothing. It's fair to say that the detailed valuation work that was required to get to the end valuations had not yet occurred.

Q. Do you have any understanding as to how that adjustment number of 2.83 billion was arrived at on Monday the 22nd of September?

A. No.

Q. I understand from other e-mails that Stephen King may have been the source of that number. Is that your understanding?

A. I don't recall if that number was

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sourced from Stephen or otherwise.

Q. You know Stephen, correct?

A. I do, yes.

Q. And what role did he play at Barclays at this point in September of '08?

A. So he was a senior trader within the PMCG group and was one of the people in the front office that was most involved with the -- with the acquisition from a business perspective and he was one of my main contacts from a business perspective during the entire process.

Q. And did you have any discussions with Stephen as early as the 22nd about valuation adjustments to the inventory that had come over?

A. I don't recall precise dates of conversations I had with him. I was certainly having conversations with him throughout the process to work on ensuring that the acquisition balance sheet I would be treating it at any time was as accurate as I could make it.

Q. We could probably move to the side

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for now 87B, your handwritten notes, and the other stuff. But keep 400A, the document we were just looking at handy. And especially the last page of 400A.

(Pause on the record.)

(Deposition Exhibit 401A, document bearing production numbers BCI-EX-(S)-00052667 through BCI-EX-(S)-00052668 with attachment, marked for identification as of this date.)

BY MR. TAMBE:

Q. I've handed you a three-page document marked Exhibit 401A. Take a moment to look at it and let me know when you are done.

(Document review.)

A. Okay.

Q. And this is an e-mail from you to Rich Ricci and others. Do you see that?

A. Yes.

Q. And you're attaching another iteration of the acquisition balance sheet, correct?

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A. Yes.

Q. And you state in your e-mail "The \$2.83 valuation adjustment is S. King's first cut only."

Do you see that?

A. Yes.

Q. If you could turn to the balance sheet which is the last page of Exhibit 401A.

A. (Witness complies.)

Q. And if we compare it to the balance sheet we were looking at which is 400A, both of these are -- the cover e-mails are 22nd September 2008. It looks like Exhibit 401 is a little bit later in the day than Exhibit 400. You could confirm that for yourself.

A. Yeah. They're both on the same date and, yes, they're the e-mails from slightly different times during the day, yes.

Q. Right. And 401 is after 400, correct?

A. Yes.

Q. There's a couple of changes that I want to bring to your attention. One is on

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Exhibit 401A, you have a line item now for Friday P&L approximately.

Do you see that?

A. Yes.

Q. And so that's reflecting a Friday profit and loss number?

A. That's what Friday P&L stands for, yes.

Q. And that's a number of about \$200 million.

A. Yes.

Q. What is your understanding of what that entry referred to?

A. I don't recall putting together this precise version. The item is included as part of the calculation of fair value based on best information at the time. But in terms of how precisely it fit into that calculation I don't have a clear recollection.

Q. The valuation adjustment number is the same as before, the 2.83 billion negative.

Do you see that?

A. Yes.

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Q. And there's a note associated with that adjustment, note 5.

A. Yes.

Q. And in Exhibit 401A note 5 states Trades are initially booked at BoNY prices. 2.83 billion is initial estimate of the adjustment Barclays' marks.

Do you see that?

A. Yes.

Q. And, again, do you know what process was followed in coming up with this \$2.83 billion number on the 22nd?

A. That would have been -- or was an early estimate of the adjustment that would be required to get the inventory to the 42.55 number which would have been the best estimates of the prior bid price at that time. As talked about, these numbers were moving frequently during this period as additional information was acquired.

But that's what the 2.83 -- that's the purpose of the 2.83 was fulfilling in that calculation there at that time.

Q. Okay. And I could see

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2 mathematically how the 2.83 sort of gets
3 subtracted from the 45.18 but what's the
4 process that yields the 2.83? Is it CUSIP by
5 CUSIP? Is it by asset category? Is it an
6 estimate of the entire portfolio? How is that
7 done? Back at that point in time.

8 A. Back at that point in time I don't
9 have clear understanding of the process that
10 Stephen went through to get that initial cut.
11 It was understood at that time that we were
12 working on provisional numbers and a
13 provisional understanding of the assets. And
14 that a great deal of work involving Stephen
15 King and front office but also finance price
16 testing and discussion with PwC, our auditors,
17 would be required before we got to a number
18 which was sufficiently verified to be included
19 in our financial statements.

20 Q. I understand, Mr. Romain, that you
21 probably went through a lot of additional
22 steps before you put anything in your reported
23 financial statement. I really am focusing on
24 that date, the 22nd of September, the
25 transaction has closed that morning. I just

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2 putting together the acquisition balance
3 sheets, I didn't have an understanding as to
4 what cure payment was or what the nature of
5 our obligation was. So there were initial
6 placeholder numbers included for that as well
7 as a number of other items. The source of
8 those numbers I don't recall precisely now but
9 I do recall that they were moving quickly as I
10 had discussions with people who had an
11 understanding of the terms of the
12 acquisition -- the terms of the acquisition in
13 that regard and better understood the
14 appropriate item -- the appropriate quantum to
15 be included.

16 The cure in particular had two
17 sources of uncertainty which persisted for
18 some time. The first was uncertainty as to
19 amount which was an exercise by which we
20 needed to identify which contracts we'd be
21 accepting and therefore which cure payments
22 would be paid.

23 And the second was a question of
24 accounting treatment under appropriate
25 accounting standards because in acquisition

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2 want to know if you know what process was
3 followed in arriving at that estimate that
4 morning.

5 A. I don't know, no.

6 Q. If you'd look down in
7 Exhibit 4012A, below the net asset calculation
8 there are line items -- I'm sorry -- below the
9 total asset calculation, there are line items
10 for repo liability, cure, retention, bonus.

11 Do you see that?

12 A. Yes.

13 Q. And if you compare the entries for
14 cure and bonus accrual on Exhibit 401A to
15 those same items on 400A you'll see different
16 entries, right?

17 A. Yes, yes.

18 Q. So the cure payment which was
19 reflected at 2.25 in Exhibit 400A in
20 Exhibit 401A is .8 billion.

21 Do you see that?

22 A. Yes.

23 Q. And do you know a reason for why
24 that number changed on the 22nd of September?

25 A. Well, at that time when I was

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2 accounting you're required to include only
3 obligations that you take on. And there is a
4 way of viewing the cure payments which
5 would -- and which would imply that we should
6 not recognize any cure payments as an accrual
7 in the acquisition balance sheet because we
8 had no obligation to accept any contracts.

9 That was an issue which was
10 discussed for some time with PwC. That
11 discussion was running parallel with the
12 separate consideration of how much cure we
13 thought we'd end up paying. The end
14 resolution of that was that we felt that the
15 appropriate interpretation of accounting
16 standards would require us to include our best
17 estimate for cure payments in the acquisition
18 balance sheet and that's what we ended up
19 doing.

20 Q. And by the time you end up
21 disclosing your financial statements for the
22 acquisition, did you ultimately use the
23 financial number that was actually paid out by
24 Barclays for cure?

25 A. By the time we -- by the time we

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published our financial statements the process was not quite complete but very substantially complete. So the amount we included as an accrual was \$224 million. My recollection is that by the time we reached financial statements we paid very close to that amount and there was a small amount which we were intending still to pay. And when I revisited it in the middle of this year the difference between what we paid and what we recognized in our financial statements was very small. A quantum of less than a million dollars as I recall.

Q. Okay. And as you compared 400A and 401A, the net asset number in 401A is \$4.52 billion, correct?

A. Yes.

Q. And that's up from 3.67 billion in Exhibit 400A.

A. Yes.

Q. I've handed you, sir, a document previously marked as Exhibit 361A. Take a moment to review it and let me know when you're done.

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(Document review.)

MR. WOOD: Can I just note on the record that I think this same document has also been marked as Exhibit 384 in another deposition.

(Document review continuing.)

A. Okay.

Q. And sir, do you recognize this as a forward of your e-mail that we were just looking at, Exhibit 401A, by Mr. Clackson to Rich Ricci and so on?

Do you see that?

A. Yes.

Q. And you can confirm this for me but it appears to me that the attachment to Exhibit 361A, the acquisition summary, although the printout is a little different I believe it's the same spreadsheet as 401A but correct me if I'm wrong.

A. Yes. Yes, it is.

Q. Now, if you focus on Mr. Clackson's e-mail to Rich Ricci forwarding this draft balance sheet, he states, "So some things we have to keep working on to squeeze

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out what we can, but looks more like 3 to 3.5 rather than 4 plus."

Do you see that?

A. Yes.

Q. What's he referring to with the 3 to 3.5 rather than the 4 plus?

MR. SHAW: Objection, foundation.

A. I don't know.

Q. Was it your understanding that there was a target negative goodwill number that you were looking to achieve?

A. No.

Q. That wasn't your understanding.

A. No, that wasn't my understanding.

Q. Did you have an understanding as to any target goodwill number?

A. No.

Q. Rich Ricci responds to Patrick Clackson by saying, "What have we told Group?"

Do you see that?

A. Yes.

Q. Do you understand what the reference to "group" there is?

A. I don't -- I don't know what he

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means. Typically when we refer to group we mean Barclays Group.

Q. Putting this exhibit aside, at this time period, early the week of the 22nd, were you party to any discussions about trying to achieve a negative goodwill number that coincided with the negative goodwill number that had been set out in the Barclays board presentations the prior week?

A. No.

Q. Was there any concern about not achieving the negative goodwill number that had been disclosed to the board?

MR. SHAW: Objection, foundation.

A. Not that I was aware of.

Q. Sir, I've handed you what's been previously marked as Exhibit 385. If you could take a moment to review that e-mail chain and let me know when you're done.

(Document review.)

A. Okay.

Q. You'll see this e-mail chain begins again on page 2 with the cover e-mail to Exhibit 401A which is your e-mail to the

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2 group.

3 Do you see that?

4 A. Yes.

5 Q. And I want to draw your attention
6 to the first page of Exhibit 385 which is the
7 third e-mail down which is from Rich Ricci to
8 Patrick Clackson.

9 Do you see that?

10 A. Yes.

11 Q. It says, "Need to get to 4 or no
12 write-down capacity."

13 Write-down is misspelled but it
14 says write-down capacity.

15 Do you see that?

16 A. Yes.

17 Q. Do you know what that was a
18 reference to?

19 A. No, I don't.

20 (Deposition Exhibit 402A, document
21 bearing production number
22 BCI-EX-(S)-00052678, marked for
23 identification as of this date.)

24 BY MR. TAMBE:

25 Q. Sir, I've handed you a one-page

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2 document marked Exhibit 402A. Take a moment
3 to review it and let me know when you're done.

4 (Document review.)

5 A. Okay.

6 Q. And you'll see the bottom e-mail
7 on this page, Exhibit 402A, is an e-mail from
8 you to Jasen Yang copied to others.

9 Do you see that?

10 A. Yes.

11 Q. Okay. Who is Jasen?

12 A. Jasen is another trader in the
13 PMGT group. I believe he reports to Stephen
14 King.

15 Q. You state in your second
16 paragraph, "What we're ultimately trying to
17 get to is a valuation for the total portfolio
18 (including the 1.9 billion from the box) for
19 inclusion in the acquisition balance sheet -
20 Friday close so not including any
21 Monday/Tuesday gain/losses which should remain
22 in trading P&L."

23 Do you see that?

24 A. Yeah.

25 Q. Were you stating in that sentence

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2 that you were trying to value the total
3 portfolio as of Friday close of business
4 prices?

5 A. Yeah. That point in time --
6 that's the direction I'm giving to Jasen at
7 that point in time, yes.

8 Q. I understand from your testimony
9 this morning that for the collateral that was
10 transferred over, the Thursday, Friday, the
11 weekend, the valuation date that was picked
12 was September 22nd, the Monday, right?

13 A. That's true.

14 Q. Why the change? Why was that the
15 ultimate decision?

16 A. At that point in time the deal had
17 only just been done and my understanding of
18 what happened when and other terms and what
19 had been received when was incomplete and
20 evolving. And over time discussions of
21 various aspects occurred and one of which was
22 the appropriate valuation date and the
23 appropriate valuation date was determined to
24 be the 22nd of September.

25 Q. In Exhibit 401A you have a line

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2 item there for Friday P&L.

3 Do you see that?

4 A. Yes.

5 Q. Can you tell from that version of
6 the acquisition summary balance sheet as of
7 what date you were valuing the inventory?

8 A. I can't, no. And to be clear I
9 wasn't valuing the inventory.

10 Q. Or Barclays was valuing the
11 inventory.

12 A. Yeah.

13 Q. Because the line right above the
14 Friday P&L line in Exhibit 401A reads
15 Inventory Thursday Close.

16 Do you see that?

17 A. Yes.

18 Q. And Thursday is when the Fed repo
19 assets were transferred over to Barclays,
20 correct?

21 A. I don't have full information of
22 exactly what was transferred precisely when.

23 Q. Do you know who would have
24 provided you with the Friday P&L number that
25 appears in Exhibit 401A?

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A. No.

Q. When the valuation was done as of Monday the 22nd of September were the prices used close of business prices on Monday the 22nd?

A. I'm not sure. I'm not the valuation expert. I'm not sure what the CUSIP-by-CUSIP approach that was taken was. And, you know, what market convention is for valuing the various security types which were involved.

Q. Okay. Who would know the answer to that?

A. It would be the price testing group within product control.

Q. And just so I understand, just using 401A as the example, if the decision was made -- and the decision was made -- to price the inventory as of Monday, September 22nd, having done that, would you take into account in valuing the assets any P&L on Friday?

A. I'm not sure I quite understand the question. Sorry. Take into account in what way?

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Q. As you do in Exhibit 401A.

In Exhibit 401A, if I understand what's going on there, there's a valuation -- at least it appears to be, inventory Thursday close. And then the gain that is earned by Barclays during the day on Friday is reflected as additive to the asset value.

Do you see that?

A. Yes.

Q. If the decision was made that you weren't going to value the inventory as of Thursday, you were going to value the inventory as of Monday, would that eliminate the need to record a P&L gain for Friday?

A. You'd be valuing it by reference to the Monday price. So that would be the sum of what you'd need to do.

Q. But this P&L gain that's reflected on Exhibit 401A, that would be categorized as the trading P&L, correct?

A. I don't know what that item particularly was.

(Deposition Exhibit 403A, document bearing production numbers

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BCI-EX-(S)-00024689 through BCI-EX-(S)-00024690 with attachment, marked for identification as of this date.)

BY MR. TAMBE:

Q. Sir, I've handed you a three-page document marked Exhibit 403A. A cover e-mail, a placeholder page, and then a spreadsheet. Let me know when you're done reviewing it. (Document review.)

A. Okay.

Q. And the last page of Exhibit 403A, if you can confirm that that's another version of the acquisition balance sheet, correct?

A. It is, yes.

Q. And it's a cover e-mail from you to Patrick Clackson and that's dated September 24th, correct?

A. Yes.

Q. Now, if you compare Exhibit 403A, the acquisition balance sheet in Exhibit 403A, with Exhibit 401A, you'll see that the net asset number has \$6.01 billion.

Do you see that?

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A. Yes.

Q. And at least one of the drivers of that change is the valuation adjustment number. And you'll see it's down from 2.83 to 1.38.

A. Sorry. You changed my reference to which version?

Q. Sure. The two documents you should be looking at are Exhibit 401A and 403A.

A. Yes. One of the differences is that.

Q. Okay. Now, that's roughly a \$1.5 billion difference, correct? In the valuation adjustment.

A. Well, it's -- in terms of the adjustment that's made to the 45.18 to get to a net number the difference is slightly less.

Q. Right.

A. Because there's no 0.2.

Q. The P&L, the Friday P&L number is no longer --

A. Yes.

Q. But looking at just the valuation

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2 adjustment line you've gone from a 2.83
3 negative to a 1.38 negative adjustment,
4 correct?

5 A. My concern there is whether we're
6 comparing like with like. I don't know enough
7 about the 0.2 to know whether that was rolled
8 into the 1.38 or not.

9 Q. And do you have any understanding
10 as to the reason for the change from 2.83 to
11 the 1.38 putting aside the 0.2?

12 A. No.

13 Q. Both in 401A and 403A on -- for
14 the inventory pricing there's a note that
15 reads, "Trades are initially booked at BoNY
16 prices."

17 Do you see that?

18 A. Yes.

19 Q. Do you know what the convention is
20 in pricing securities that are used for repo
21 trading?

22 A. I don't know.

23 Q. And do you know whether the Bank
24 of New York was Barclays' agent for that repo
25 transaction?

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2 A. I'm not sure of the precise
3 relationships in that regard, no.

4 MR. TAMBE: Let's take a short
5 break.

6 (Recess taken.)

7 BY MR. TAMBE:

8 Q. Mr. Romain, we talked this morning
9 about some of the assets acquired by Barclays
10 having been sold.

11 Do you remember that?

12 A. Once the assets were acquired a
13 number of things happened to them. Some would
14 have been sold relatively shortly. Some were
15 transferred into ongoing trading books to be
16 managed by the relevant traders. Once that
17 happens they're commingled with assets which
18 were acquired in other ways so there would
19 have been some which had been elected and
20 there would have been some which were held for
21 a long period.

22 Q. We had a brief discussion about
23 whether prices at which the assets were sold
24 factored into the valuation analysis in some
25 way.

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2 Do you recall that discussion?

3 A. Yeah.

4 Q. Okay. Would transfers of assets
5 within the Barclays Group be treated as sales
6 and factored into that calculation?

7 A. In terms of the measurement
8 objective being an external fair value, those
9 prices would not factor -- those prices in and
10 of themselves would not factor into the
11 valuations.

12 However, the price at which
13 something is transferred into may well be a
14 representation of what our best estimate of
15 the market price is at that time in which case
16 they may well be the same number.

17 But in terms of the considerations
18 which feed into the price that assets were
19 transferred internally within Barclays I don't
20 have a great deal of insight into how that
21 works in practice.

22 Q. And just so I understand your
23 answer, at least for some of the assets
24 acquired from Lehman there were transfers of
25 those assets within Barclays, correct?

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2 A. Yes.

3 Q. And there were values ascribed to
4 those assets when those assets were
5 transferred internally, correct?

6 A. Yes.

7 Q. And on some occasions you have
8 taken into account the values at which those
9 internal transfers were done for purposes of
10 valuing those assets for the acquisition
11 balance sheet; is that correct?

12 A. No.

13 Q. Okay. Is it the case that
14 internal transfers and internal transfer
15 values were disregarded in doing your
16 acquisition balance sheet valuation?

17 A. I was not directly involved in the
18 valuation. I did not factor into the
19 acquisition balance sheet transfers. What I
20 factored into the acquisition balance sheets
21 was Barclays' best estimate of the bid price
22 for those securities which was determined in
23 accordance with Barclays' ongoing valuation
24 policies and applicable accounting standards.

25 Q. Okay. And when you took into

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2 account Barclays' best estimate would
3 Barclays' best estimate include bids provided
4 by Barclays' own internal traders?

5 A. The process for valuation is
6 dependent on the asset type. And for less
7 liquid assets it's more judgmental than it is
8 for more liquid assets. However, the maximum
9 possible use is always made of external data.
10 So the views of traders as to the appropriate
11 valuation of an asset being their best
12 estimate of an external bid price for that
13 asset is a part of the valuation process which
14 is supplemented by external market data and
15 price testing -- and price testing procedures.
16 The precise balance between those depends on
17 the asset but external market data to the
18 extent it is available is typically the best
19 evidence of the appropriate fair value. So
20 that's the concept. When you get down to
21 individual security level, that's where my
22 sort of level of knowledge ends.

23 Q. The spreadsheets that roll up into
24 the summary sheets -- we looked at 87B and 86B
25 which were the summary level sheets that then

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2 rolled up into the acquisition balance sheet.

3 Do you remember that?

4 A. Yes.

5 Q. Okay. The CUSIP level
6 spreadsheets, do those indicate what
7 particular methodology or process was used on
8 a CUSIP-by-CUSIP basis for determining the
9 value?

10 A. Not to my recollection. That's
11 the result of the process. But for the less
12 liquid and more complex instruments, the
13 methodology is not something which were
14 typically captured in the Excel spreadsheets.
15 There are extensive valuation procedures and
16 policies within the bank which are used as a
17 reference point for how to value these assets.
18 And the approach, the value of these assets
19 was in mind in those policies both internally
20 and in the opinion of the our outside
21 auditors.

22 Q. In terms of orders of magnitude
23 can you ascribe any percentage to the
24 percentage of this portfolio, the percentage
25 of the inventory that you believe is the fault

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2 of this less liquid more complex difficult to
3 value type of security.

4 A. There's no dividing line really.
5 It's a spectrum.

6 Q. I just want to make sure I have
7 one point covered. It's my understanding that
8 at least some of the assets acquired from
9 Lehman were subject to internal sales within
10 Barclays from one desk to another desk. Is
11 that your understanding as well?

12 A. Yes.

13 Q. Okay. Were the prices at which
14 those assets sold within Barclays ever counted
15 by you as a sale price that was used in the
16 valuation?

17 A. No. I was -- I had no awareness
18 of the price at which securities were sold.
19 What I asked for and received was the fair
20 values of the assets.

21 Q. So a trader reporting a fair value
22 of an asset to you may have factored in an
23 internal sale price but you wouldn't know
24 that.

25 A. The trader wasn't reporting

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2 valuations to me.

3 Q. Who was?

4 A. The numbers that fed into those
5 were the numbers which had been through the
6 process which we discussed earlier which
7 involved input from traders, price testing
8 within finance, and auditor review.

9 So those are the numbers which I
10 took, the numbers which had passed through
11 those processes and were then viewed as the
12 agreed appropriate fair value for the
13 instruments.

14 Q. Okay. And so the processes that
15 yield the numbers that you then used, those
16 processes could have included prices at which
17 assets sold within Barclays; is that correct?

18 MR. SHAW: Objection. That calls
19 for spec --

20 A. I wouldn't want to speculate on
21 that. All I can say which is not a response
22 to your question, but it's pertinent to it, is
23 that the values which came out of that process
24 were Barclays' view of the appropriate fair
25 value for those instruments, irrespective of

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whether transfers had occurred in those instruments or not subsequent to the transaction date. That was the measurement objective and that's what -- and that is the basis on which those numbers were considered.

Q. I'm not quarrelling with you, sir, as to whether Barclays Capital believed those to be the fair values. All I'm trying to understand is the mechanical point which is -- and maybe you don't know the answer to this.

In arriving at Barclays' best estimate of the fair values of those assets did the processes which you referred to take into account the prices at which assets were transferred within Barclays?

A. They took into account the traders' view of the value of the securities based on their experience and available market data.

Q. And do you know whether the traders' views about valuation included prices at which securities were transferred within Barclays?

A. No, I don't know that.

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day lag in the statement. So it's intended to represent the 22nd of September.

Q. And it looks like you have three entries there, cash, governments, and LOC; is that correct?

A. Yes.

Q. And LOC is letters of credit?

A. That's correct.

Q. What are letters of credit?

A. Well, they're essentially facilities which are drawn down, the account party being third-party banks but they take various forms.

Q. So in writing this are you counting that as an asset?

A. We have not included that in our acquisition balance sheets at the current time. But we're not distinguishing between those three items in terms of the nature of our claim and entitlement. These are viewed as -- all the three are viewed as margin which is related to the positions that were taken on. But it's margin which is held in one of three forms.

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Q. Okay. Thank you.

MR. TAMBE: I pass the witness.

* * *

EXAMINATION BY

MR. WOOD:

Q. Good afternoon, Mr. Romain. Again, I'm John Wood. I'm from Hughes, Hubbard & Reed. I represent the SIPA trustee.

And just to start off I'm going to ask you some questions in your capacity as a 30(b)(6) witness regarding margin held secure exchange rate derivatives and just to speed things along why don't you go ahead and take a look at your handwritten notes, Exhibit 399A.

A. (Witness complies.)

Q. On the second page, sort of the middle of the page there, you've got an entry that's margin posted by LBI at OCC (23/9).

Do you see that?

A. Yes.

Q. Is that margin posted by LBI at the OCC on September 23rd?

A. It's from the 23rd of September statement. My understanding is that there's a

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Q. Now, when you say your claim and entitlement, does that mean a claim and entitlement from the estate?

A. I'm not sure in terms of the -- in what way we make a claim at all or against who. It's my understanding that these items we are entitled to receive under the service of the acquisition.

Q. And so why were they not included in the acquisition balance sheet?

A. The letters of credit?

Q. Yes.

A. I'm not directly involved in the proceedings but I understand there are discussions with the counterparties to those letters of credit which we don't believe has a bearing on our entitlement from a legal perspective. But when preparing financial statements we tend to be conservative and prudent in the way we do so. So if there are ongoing conversations or just more potentially disputes we would bear that in mind whether or not to include them in that balance sheet.

Q. Are the disputes you're referring